

EXHIBIT “H”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 2:15-cv-00571-GJP

JURY TRIAL DEMANDED

EMIL and SHARON)	
CLOUD)	
)	DEPOSITION UPON
)	
)	ORAL EXAMINATION
)	
vs.)	OF
)	
ELECTROLUX HOME)	WILLIAM J. VIGILANTE, JR.,
PRODUCTS, INC.)	Ph.D., CPE

- - -

TRANSCRIPT OF ORAL DEPOSITION, taken by
and before DONNA HUNTER, Registered Professional
Reporter and Notary Public, at the Offices of deLUCA
LEVINE, LLC, Three Valley Square, 512 E. Township
Line Road, Suite 220, Blue Bell, PA, on Wednesday,
August 31, 2016, commencing at 10:00 a.m.

ERSA Court Reporters
30 South 17th Street
United Plaza, Suite 1520
Philadelphia, PA 19103
(215) 564-1233

WILLIAM J. VIGILANTE, JR., Ph.D., CPE

<div>2</div> <div>1 APPEARANCES:</div> <div>2</div> <div>3 deLUCA, LEVINE, LLC</div> <div>4 By: KENNETH T. LEVINE, ESQUIRE</div> <div>5 Three Valley Square</div> <div>6 Suite 220</div> <div>7 512 E. Township Line Road</div> <div>8 Blue Bell, PA 19422</div> <div>9 Counsel for Plaintiffs</div> <div>10</div> <div>11 NICOLSON LAW GROUP</div> <div>12 BY: MELISSA YEMMA, ESQUIRE</div> <div>13 Rose Tree Corporate II - Suite 6035</div> <div>14 1400 North Providence Road</div> <div>15 Media, PA 19063</div> <div>16</div> <div>17 Counsel for Defendant,</div> <div>18 Electrolux Home Products, Inc.</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>	<div>4</div> <div>1 (It was stipulated by and between</div> <div>2 counsel that sealing, and certification be</div> <div>3 waived; and that all objections, except as</div> <div>4 to the form of the question, are reserved</div> <div>5 until the time of trial.)</div> <div>6 . . . WILLIAM J. VIGILANTE, JR.,</div> <div>7 Ph.D., CPE, having been duly sworn, was</div> <div>8 examined and testified as follows:</div> <div>9 THE REPORTER: Usual stipulations?</div> <div>10 MR. LEVINE: Except for reading and</div> <div>11 signing.</div> <div>12 BY MS. YEMMA:</div> <div>13 Q. Good morning, Dr. Vigilante.</div> <div>14 A. Good morning.</div> <div>15 Q. We've met before today, but for the record,</div> <div>16 my name is Melissa Yemma. I represent the defendant</div> <div>17 in this lawsuit that has been brought by Allstate</div> <div>18 Insurance Company, and the Clouds. And this matter,</div> <div>19 I'm sure you're familiar with, arises out of a fire</div> <div>20 that happened back on December 19th of 2013. And,</div> <div>21 we're here today to take your deposition.</div> <div>22 I know you've had other depositions in the</div> <div>23 past. Do you need me to review the rules for a</div> <div>24 deposition?</div>																																																								
<div>3</div> <div>1</div> <div>2 INDEX</div> <div>3 WITNESS: WILLIAM J. VIGILANTE, JR., Ph.D., CPE</div> <div>4 BY MS. YEMMA.....PAGE 4</div> <div>5</div> <div>6 EXHIBITS</div> <table><tr><th>NUMBER</th><th>PAGE DESCRIPTION</th><th>PAGE MARKED</th><th>ATTACHED</th></tr><tr><td>Vigilante-1</td><td>Notice of Deposition</td><td>5</td><td>175</td></tr><tr><td>Vigilante-2</td><td>CD with file materials (Retained my Ms. Yemma)</td><td>17</td><td>176</td></tr><tr><td>Vigilante-3</td><td>Dr. Vigilante's Report</td><td>17</td><td>177</td></tr><tr><td>Vigilante-4</td><td>11/1/15 CV</td><td>20</td><td>178</td></tr><tr><td>Vigilante-5</td><td>7/18/16 Updated CV</td><td>29</td><td>179</td></tr><tr><td>Vigilante-6</td><td>History of Expert Testimony</td><td>56</td><td>180</td></tr><tr><td>Vigilante-7</td><td>Notes from Teleconference with Mike Stoddard</td><td>77</td><td>181</td></tr><tr><td>Vigilante-8</td><td>Skinny Warning Label</td><td>95</td><td>182</td></tr><tr><td>Vigilante-9</td><td>Updated version of warning corresponding to Illustration 1</td><td>121</td><td>183</td></tr><tr><td>Vigilante-10</td><td>Updated version of warning corresponding to Illustration 3</td><td>122</td><td>184</td></tr><tr><td>Vigilante-11</td><td>Manufacturer's Guide To Developing Consumer Product Instructions</td><td>159</td><td>185</td></tr><tr><td>Vigilante-12</td><td>Excerpt from Chapter 36 Handbook of Human Factors and Ergonomics</td><td>159</td><td>186</td></tr><tr><td>Vigilante-13</td><td>Owner's Guide</td><td>164</td><td>187</td></tr></table> <div>24</div>	NUMBER	PAGE DESCRIPTION	PAGE MARKED	ATTACHED	Vigilante-1	Notice of Deposition	5	175	Vigilante-2	CD with file materials (Retained my Ms. Yemma)	17	176	Vigilante-3	Dr. Vigilante's Report	17	177	Vigilante-4	11/1/15 CV	20	178	Vigilante-5	7/18/16 Updated CV	29	179	Vigilante-6	History of Expert Testimony	56	180	Vigilante-7	Notes from Teleconference with Mike Stoddard	77	181	Vigilante-8	Skinny Warning Label	95	182	Vigilante-9	Updated version of warning corresponding to Illustration 1	121	183	Vigilante-10	Updated version of warning corresponding to Illustration 3	122	184	Vigilante-11	Manufacturer's Guide To Developing Consumer Product Instructions	159	185	Vigilante-12	Excerpt from Chapter 36 Handbook of Human Factors and Ergonomics	159	186	Vigilante-13	Owner's Guide	164	187	<div>5</div> <div>1 A. I don't believe so.</div> <div>2 Q. I'll just remind you if you need to take a</div> <div>3 break, just let me know. Okay, sound good?</div> <div>4 A. Okay.</div> <div>5 Q. I am going to mark as Vigilante-1, a copy of</div> <div>6 the Deposition Notice for today's deposition. I'm</div> <div>7 handing that to you.</div> <div>8 (Third Amended Notice of Deposition</div> <div>9 marked Vigilante Exhibit No. 1 for</div> <div>10 identification.)</div> <div>11 BY MS. YEMMA:</div> <div>12 Q. Have you seen a copy of that document before</div> <div>13 today?</div> <div>14 A. Yes.</div> <div>15 Q. Okay. And if you would turn to, I believe</div> <div>16 it's the last page of the document -- it says</div> <div>17 Exhibit A. Have you had an opportunity to review</div> <div>18 that exhibit?</div> <div>19 A. I believe so.</div> <div>20 Q. Have you brought with you materials</div> <div>21 responsive to Exhibit A?</div> <div>22 A. I have.</div> <div>23 Q. Okay. And before the deposition, you handed</div> <div>24 me a CD. Is that correct?</div>
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<p style="text-align: right;">6</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And if you could, for the record,</p> <p>3 identify generally what is on that CD.</p> <p>4 THE WITNESS: Oh, that report</p> <p>5 for Purswell is on that CD.</p> <p>6 MR. LEVINE: I thought you had a</p> <p>7 thumb drive?</p> <p>8 THE WITNESS: The thumb drive is</p> <p>9 for me. The CD was for --</p> <p>10 MR. LEVINE: Do you want to give</p> <p>11 her the thumb drive, and take back the disk?</p> <p>12 THE WITNESS: The thumb drive</p> <p>13 doesn't have -- I can put everything on it.</p> <p>14 How about if I take that back, and I'll give</p> <p>15 you a thumb drive at the end of the</p> <p>16 deposition?</p> <p>17 MS. YEMMA: That's perfectly fine.</p> <p>18 THE WITNESS: I can put more files</p> <p>19 on thumb drives.</p> <p>20 MS. YEMMA: That's okay.</p> <p>21 Let's go off the record.</p> <p>22 (Discussion held off the record.)</p> <p>23 MS. YEMMA: Okay, back on the</p> <p>24 record.</p>	<p style="text-align: right;">8</p> <p>1 The deposition transcripts of David Fuller,</p> <p>2 Mr. Brown, Mr. and Mrs. Cloud, Carl King. And, it</p> <p>3 looks like there's two copies of Steven Brown's</p> <p>4 deposition.</p> <p>5 The dryer literature, that is contained in</p> <p>6 tab 4 of my notebook, that I produced last time.</p> <p>7 And then the cleaning calls that I -- whether we</p> <p>8 discussed them at the Vitale matter, so a copy of</p> <p>9 those are in there, as well.</p> <p>10 The manuals for the Exemplar indicator</p> <p>11 lights, that we spoke about in the Vitale matter,</p> <p>12 Example: Flex Foil Ducting.</p> <p>13 Then I have the other deposition summaries</p> <p>14 of the prior or other case depositions, including</p> <p>15 Carl King's testimony in Neucum, Shelley Clausen,</p> <p>16 David Fuller, in this matter, Steve Joeger; Carl</p> <p>17 King, in the Gianferri matter; Carl King in the</p> <p>18 Marquette matter; Carl King in the Shannon matter;</p> <p>19 Carl King in the Vitale matter; Carl King in this</p> <p>20 matter. Rae Creiger in the Gianferri matter;</p> <p>21 Michael Ricklefs in the Gargiulo matter,</p> <p>22 G-A-R-G-I-U-L-O; Michael Ricklefs in Gianferri;</p> <p>23 Brian Ripley in Gargiulo; Brian Ripley in Marquette;</p> <p>24 Brian Ripley in State Farm, June 1st, 2012 in a</p>
<p style="text-align: right;">7</p> <p>1 BY MS. YEMMA:</p> <p>2 Q. We took a short break. So with regard to</p> <p>3 the CD, I realize there's a copy of Dr. Purswell's</p> <p>4 report, and it's plaintiff's position that that will</p> <p>5 not be included in your file. But other than that</p> <p>6 report, what else is contained on that CD?</p> <p>7 A. There's also a report, that's not on that</p> <p>8 CD, for Mr. Crabtree, the defense expert,</p> <p>9 Mr. Crabtree. So, they're on there, but we're going</p> <p>10 to remove them.</p> <p>11 Q. Okay.</p> <p>12 A. But, that contains all of my electric file.</p> <p>13 So there's discovery material in there. There's my</p> <p>14 invoices in there, three invoices in there, for this</p> <p>15 case; my four-year testimony list; the multiple</p> <p>16 notices of deposition; the engagement letters for</p> <p>17 Mr. Hughes, and the one I sent for the deposition to</p> <p>18 your office, the Notice of Deposition Scheduling</p> <p>19 Order -- I'm just going through to make sure I know</p> <p>20 what's in there -- my CV, and there is a cover</p> <p>21 letter from your office to Mr. Hughes, that I was</p> <p>22 copied on, or sent a copy of, regarding the</p> <p>23 scheduling of depositions for Mr. Stoddard, myself,</p> <p>24 and someone else. I don't remember who it is.</p>	<p style="text-align: right;">9</p> <p>1 State Farm matter; Steven Brown in this matter.</p> <p>2 My depo summaries from the Power case, which</p> <p>3 includes Carl King, and then Carl King's testimony,</p> <p>4 trial testimony in Tyrell.</p> <p>5 And, then there's two other summaries in</p> <p>6 there, but they were specific to another case, to</p> <p>7 the Power case.</p> <p>8 Then I have a summary for Mr. and</p> <p>9 Mrs. Vitale in there. So, it's a duplicate.</p> <p>10 I have the references I cited in my report.</p> <p>11 I have a PDF and JPEG of the Exemplar warnings that</p> <p>12 are in my -- actually, the cleaning graphic, the</p> <p>13 cleaning graphic that's used in my report. The</p> <p>14 warnings PDF are my updated warnings. So, the</p> <p>15 warnings in Cloud, I changed in a later report. So,</p> <p>16 I put a copy of that in the file, as well.</p> <p>17 Q. Okay. Is there a -- not to interrupt you,</p> <p>18 but is there a hardcopy of that?</p> <p>19 A. No.</p> <p>20 Q. Could we get a hard copy?</p> <p>21 MR. LEVINE: Okay.</p> <p>22 THE WITNESS: It's just one PDF.</p> <p>23 MR. LEVINE: Okay. Are you</p> <p>24 connected to our WiFi?</p>

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<p style="text-align: right;">10</p> <p>1 THE WITNESS: I am not, but I could</p> <p>2 be.</p> <p>3 MR. LEVINE: All right. Well, if</p> <p>4 you want to just hand me your thumb drive,</p> <p>5 and I'll pop it onto my computer.</p> <p>6 MS. YEMMA: Is it on the CD?</p> <p>7 THE WITNESS: It's on the CD.</p> <p>8 MS. YEMMA: It's on the CD.</p> <p>9 MR. LEVINE: Oh, okay. But, I</p> <p>10 mean, if you want a physical copy for this</p> <p>11 deposition, I'd be happy to give it to you.</p> <p>12 Where does it go on the CD,</p> <p>13 folder-wise?</p> <p>14 THE WITNESS: It should be under</p> <p>15 Depo Folder, Warnings.</p> <p>16 MR. LEVINE: Okay.</p> <p>17 THE WITNESS: I'm actually</p> <p>18 connected to your WiFi as a visitor.</p> <p>19 BY MS. YEMMA:</p> <p>20 Q. All right. Are we done?</p> <p>21 A. No, I've got a few more.</p> <p>22 Q. Okay. Then, keep going.</p> <p>23 A. I got the transcript for Carl King in this</p> <p>24 matter, the Cloud matter; the Electrolux's Answers</p>	<p style="text-align: right;">12</p> <p>1 Then, there's 121 DVRs, which is Electrolux</p> <p>2 Bates number 76 through 557; the airflow diagram,</p> <p>3 which is Bates number Electrolux 75; the Bill of</p> <p>4 Materials, which is Electrolux 40 through 45.</p> <p>5 As I mentioned earlier, the Electrolux</p> <p>6 Disclosures -- discovery documents Bates numbers 593</p> <p>7 through 5613.</p> <p>8 And, then the depositions of Sergeant</p> <p>9 Johnson, Michael Johnson, and then the incident</p> <p>10 report from the fire department that responded.</p> <p>11 And, that should be all.</p> <p>12 MS. YEMMA: Okay. Ken, can you</p> <p>13 also have printed out the notes from the</p> <p>14 call with Mike Stoddard?</p> <p>15 MR. LEVINE: Sure.</p> <p>16 Okay, and because I was doing</p> <p>17 this -- I wasn't listening to it -- what was</p> <p>18 the context of the conversation with Mike</p> <p>19 Stoddard?</p> <p>20 THE WITNESS: Typically, I call</p> <p>21 Mike on all these cases before I get his</p> <p>22 report so I know what he found.</p> <p>23 MR. LEVINE: Did you have a</p> <p>24 conversation before you prepared your</p>
<p style="text-align: right;">11</p> <p>1 to the Complaint, and the Bates documents</p> <p>2 EHP-Cloud 25 and 26, which were labels that were on</p> <p>3 the dryer, or alleged to be on the dryer -- "claim"</p> <p>4 is a better word.</p> <p>5 My notes from a teleconference I had with</p> <p>6 Mike Stoddard on January 14th, 2005; the report of</p> <p>7 Rob Buckley; a copy of the Amended Complaint; my</p> <p>8 report.</p> <p>9 And then also on the CD is more of the</p> <p>10 discovery information that was sent to me, including</p> <p>11 the discovery responses of Electrolux, and the</p> <p>12 report of Mike Stoddard.</p> <p>13 And, the scene photographs, or site</p> <p>14 photographs, from Crabtree; the opposing expert</p> <p>15 reports of Gerry Piombino, P-I-O-M-B-I-N-O, and John</p> <p>16 McHenry, and, the expert -- Electrolux Expert</p> <p>17 Disclosure -- two Electrolux disclosures, Bates</p> <p>18 numbers -- discovery documents Bates numbers</p> <p>19 EHP-Cloud 558 through 592, which are the two</p> <p>20 articles by the Morrison guys.</p> <p>21 Q. By Trey Morrison?</p> <p>22 A. I'll get their names. Trey Morrison -- and</p> <p>23 I can't remember who the other guy is --</p> <p>24 McDonald/Ogle from Exponent.</p>	<p style="text-align: right;">13</p> <p>1 report?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. LEVINE: All right. Then, I</p> <p>4 would be happy to give it to you.</p> <p>5 MR. YEMMA: Okay, thank you.</p> <p>6 MR. LEVINE: And, where would I</p> <p>7 find it under this?</p> <p>8 THE WITNESS: It would be under</p> <p>9 Depo Folder, and then it says, Mike</p> <p>10 Stoddard, T-C PDF.</p> <p>11 MR. LEVINE: All right. This one?</p> <p>12 (Indicating)</p> <p>13 THE WITNESS: Yes, under Mike</p> <p>14 Stoddard.</p> <p>15 MR. LEVINE: Mike Stoddard,</p> <p>16 telephone call?</p> <p>17 THE WITNESS: Yes.</p> <p>18 MR. LEVINE: All right.</p> <p>19 MS. YEMMA: Thank you.</p> <p>20 BY MS. YEMMA:</p> <p>21 Q. We had a conversation before we went on the</p> <p>22 record this morning. In addition to the CD, you</p> <p>23 also brought your notebook, which is in a white</p> <p>24 three-bound binder, and there are some documents in</p>

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<p style="text-align: right;">14</p> <p>1 that binder, correct, which is open in front of you?</p> <p>2 A. Yes.</p> <p>3 Q. Are there any documents in that binder, that</p> <p>4 are not on the CD?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And, if you could just identify what</p> <p>7 they are for the record?</p> <p>8 A. The transcripts of Sharon Cloud, Emil Cloud,</p> <p>9 and Michael Johnson, that I've highlighted. So,</p> <p>10 there's a different version on the CD.</p> <p>11 And then I have a copy of the signed</p> <p>12 engagement letter, that you sent yesterday, or the</p> <p>13 day before.</p> <p>14 A cover letter dated July 7th, 2015 from</p> <p>15 Patrick Hughes just listing the information he sent</p> <p>16 me on a thumb drive.</p> <p>17 And then another cover letter from</p> <p>18 Mr. Hughes' office on August 13th, 2005, stating</p> <p>19 that he enclosed the deposition transcript of</p> <p>20 Michael Johnson.</p> <p>21 Q. When you mentioned the deposition</p> <p>22 transcripts, that are in your notebook, you said</p> <p>23 there's a different version on the CD.</p> <p>24 And, you mean by that there's a highlighted</p>	<p style="text-align: right;">16</p> <p>1 So I think that would be the two areas that</p> <p>2 would fall within that area of your question.</p> <p>3 Q. When you say you've had a number of</p> <p>4 Electrolux cases, can you approximate for me how</p> <p>5 many Electrolux cases you've had?</p> <p>6 A. I'm going to say about 12.</p> <p>7 Q. And I know sometimes experts are the last to</p> <p>8 know, but do you know whether those are all open</p> <p>9 cases?</p> <p>10 A. Some are open; some are settled.</p> <p>11 Q. Can you approximate how many are open, or</p> <p>12 how many are settled?</p> <p>13 A. I would say about half are opened; half are</p> <p>14 closed.</p> <p>15 Q. And, how many depositions have you given in</p> <p>16 Electrolux cases?</p> <p>17 A. I would say, at least, five.</p> <p>18 Q. And, all the Electrolux cases involve</p> <p>19 clothes dryers?</p> <p>20 A. Yes.</p> <p>21 Q. And, are they all subrogation cases?</p> <p>22 A. Yes.</p> <p>23 Q. What insurance carriers have you been</p> <p>24 retained by in those cases?</p>
<p style="text-align: right;">15</p> <p>1 version in your notebook, but not on the CD?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Other than the documents that are</p> <p>4 contained in your notebook, and that are on the</p> <p>5 CD -- and, actually, let's mark that -- we'll mark</p> <p>6 it as Vigilante-2, once you're finished with it,</p> <p>7 Ken, if that's okay.</p> <p>8 Are there any documents, apart from what's</p> <p>9 in the notebook, and on the CD, that you relied on</p> <p>10 in forming your opinions in this matter?</p> <p>11 A. Specifically, no.</p> <p>12 Q. Okay. When you say "specifically",</p> <p>13 generally, are there documents that you are relying</p> <p>14 on, that aren't contained in either the CD, or the</p> <p>15 notebook?</p> <p>16 A. I would say there was, generally, my</p> <p>17 education, and training, and experience encompasses</p> <p>18 a whole lot of different written treatises, and</p> <p>19 textbooks, and training, that I relied upon that I</p> <p>20 didn't specifically reference for this case.</p> <p>21 And, then, of course, I've had a number of</p> <p>22 Electrolux cases in the past, that I relied upon in</p> <p>23 having an understanding of what the issues are, the</p> <p>24 history of the issues, and so forth.</p>	<p style="text-align: right;">17</p> <p>1 A. I know State Farm, and Allstate. I'm not</p> <p>2 sure if there's others.</p> <p>3 Q. I'm going to mark a copy of your report.</p> <p>4 So, Vigilante-2 will be the CD, with the file</p> <p>5 materials, and Vigilante-3 will be a copy of your</p> <p>6 report.</p> <p>7 MS. YEMMA: Ken, do you need a copy</p> <p>8 of the report?</p> <p>9 MR. LEVINE: No.</p> <p>10 MS. YEMMA: And, Dr. Vigilante, do</p> <p>11 you want to work off of the copy in your</p> <p>12 notebook?</p> <p>13 THE WITNESS: Please.</p> <p>14 MS. YEMMA: Okay.</p> <p>15 MR. LEVINE: And, the other</p> <p>16 document is on its way, as well.</p> <p>17 MS. YEMMA: And, here it is.</p> <p>18 (CD with file materials marked</p> <p>19 Vigilante Exhibit No. 2 for identification,</p> <p>20 and retained by Ms. Yemma;</p> <p>21 Dr. Vigilante's report dated</p> <p>22 1/20/16 marked Vigilante Exhibit No. 3 for</p> <p>23 identification.)</p> <p>24 BY MS. YEMMA:</p>

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<p style="text-align: right;">18</p> <p>1 Q. Dr. Vigilante, we just marked, as 2 Vigilante-3, a copy your report in this matter. 3 And, when did you issue that report? 4 A. January 20, 2016. 5 Q. Have you been asked to, or are you planning 6 to, issue any supplemental reports in this matter? 7 A. I have not been asked to, and at this point 8 I don't have an intention to write a supplemental 9 report. 10 Q. And the report, that we have marked as 11 Vigilante-3, that's the only report you've issued in 12 this matter; is that correct? 13 A. Yes. 14 Q. So since writing your report, or issuing 15 your report on January 20th of 2016, have you 16 received any materials in connection with this 17 matter? 18 A. Yes. 19 Q. What materials have you received? 20 A. The defense expert reports. 21 Q. Other than defense expert reports, anything 22 else? 23 A. Nothing else is coming to mind. 24 Q. And, I'll represent to you Electrolux has</p>	<p style="text-align: right;">20</p> <p>1 MS. YEMMA: Okay. I'm marking, as 2 Vigilante-4, a copy of your CV. 3 Ken, do you need a copy? 4 MR. LEVINE: No, I don't need a 5 copy unless I demand one. 6 MS. YEMMA: Oh, okay. 7 MR. LEVINE: You're doing great 8 over there. I don't want to get in the way. 9 MS. YEMMA: Okay. 10 (Dr. Vigilante's Curriculum Vitae 11 dated 11/1/15 marked Vigilante Exhibit No. 4 12 for identification.) 13 BY MS. YEMMA: 14 Q. Dr. Vigilante, I've just handed you a 15 document that I've marked as Vigilante-4. 16 Is that is a copy of your CV? 17 A. It is a copy. 18 Q. And, is that a current copy? 19 A. It is not. 20 Q. It is not. Okay. 21 Do you have a current copy with you? 22 A. Yes. 23 Q. And, maybe I can short circuit some 24 questioning.</p>
<p style="text-align: right;">19</p> <p>1 produced additional discovery in this matter 2 pursuant to a Court Order, and I can generally 3 characterize it as materials related to 4 investigations that Carl King has performed with 5 regard to dryer fires. 6 Have you seen any of those materials? They 7 were produced in the last six weeks. 8 A. I don't believe so. 9 Q. Are there any documents, or materials, that 10 you reviewed in preparation for today's deposition, 11 that aren't included either in your notebook, or on 12 the CD? 13 A. No. 14 Q. You indicated that you have been provided 15 copies of the defense expert reports in this matter; 16 is that correct? 17 A. Yes. 18 Q. And, did you have an opportunity to review 19 those reports? 20 A. Yes. 21 Q. And, does reviewing those reports change the 22 opinions that you have expressed in your report 23 marked as Vigilante-3? 24 A. No.</p>	<p style="text-align: right;">21</p> <p>1 Can you identify what the difference would 2 be between Vigilante-4, and what your current CV is? 3 A. Specifically I cannot without going through 4 it, but generally I think I just made some editing 5 changes. 6 Q. Okay. So, if we could have a copy of that, 7 and -- 8 MR. LEVINE: Where is your most 9 current CV? 10 THE WITNESS: It's on the CD, too, 11 under Administration. 12 MR. LEVINE: Clearly, my highest 13 and best use has been found. It's under 14 Administration under -- 15 THE WITNESS: It's under Depo 16 Folder, Administration, CV. 17 MR. LEVINE: Okay. And, this is 18 the most recent version, Dr. Vigilante? 19 THE WITNESS: Yes. It's got a July 20 date on the bottom. 21 MR. LEVINE: Okay, fair enough. 22 So, we will have it copied, and it 23 will be here shortly. 24 MS. YEMMA: Okay, great. Thank</p>

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<p style="text-align: right;">22</p> <p>1 you.</p> <p>2 BY MS. YEMMA:</p> <p>3 Q. Dr. Vigilante, I last deposed you in, what</p> <p>4 we will refer to as the Vitale matter -- you're</p> <p>5 familiar with that case?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And, that would have been on</p> <p>8 April 26th of 2016.</p> <p>9 A. Yes.</p> <p>10 Q. Have you had any depositions since that</p> <p>11 date?</p> <p>12 A. In Electrolux matters, or --</p> <p>13 Q. In general.</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you have an updated copy of your</p> <p>16 testimony history?</p> <p>17 A. Yes.</p> <p>18 MS. YEMMA: And, can you copy that,</p> <p>19 too, Ken. I won't bother marking what I</p> <p>20 have because that's the older version.</p> <p>21 MR. LEVINE: Where can I find that,</p> <p>22 sir, where your testimony was as of</p> <p>23 August 17th?</p> <p>24 THE WITNESS: Yes.</p>	<p style="text-align: right;">24</p> <p>1 photographs of Exemplar dryers, and the material</p> <p>2 provided with the dryer, the manuals, et cetera,</p> <p>3 were sufficient.</p> <p>4 Q. Okay. So in terms of, you mentioned,</p> <p>5 Exemplar dryers. Have you seen photographs of</p> <p>6 Exemplar Electrolux dryers?</p> <p>7 A. I have seen photographs, and I have seen</p> <p>8 them in person.</p> <p>9 Q. Okay. So, what photographs have you seen?</p> <p>10 A. Hold on a minute. I didn't produce those in</p> <p>11 the files, so I have to go back into my own file.</p> <p>12 MR. LEVINE: Sir, are you saying</p> <p>13 it's on the disk, or not on the disk?</p> <p>14 THE WITNESS: Not on the disk. I</p> <p>15 didn't use it for this case.</p> <p>16 MR. LEVINE: Oh, okay.</p> <p>17 Off the record.</p> <p>18 (Discussion held off the record.)</p> <p>19 THE WITNESS: I can't seem to find</p> <p>20 my folder of Exemplar Electrolux,</p> <p>21 Frigidaire, and Kenmore dryers, that I have</p> <p>22 collected over the years.</p> <p>23 BY MS. YEMMA:</p> <p>24 Q. How have you collected those materials?</p>
<p style="text-align: right;">23</p> <p>1 MR. LEVINE: All right.</p> <p>2 MS. YEMMA: Okay. And, we'll come</p> <p>3 back to that.</p> <p>4 BY MS. YEMMA:</p> <p>5 Q. Dr. Vigilante, you still have your own</p> <p>6 company, Vigilante Forensic?</p> <p>7 A. Yes.</p> <p>8 Q. Any employees?</p> <p>9 A. Not yet.</p> <p>10 Q. Okay. Working on it?</p> <p>11 A. Working on it.</p> <p>12 Q. Okay. With regard to this matter, have you</p> <p>13 had an opportunity to examine the Cloud dryer?</p> <p>14 A. No.</p> <p>15 Q. Have you seen any photographs of the dryer?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Have you asked to see the Cloud dryer in</p> <p>18 person?</p> <p>19 A. In person, no.</p> <p>20 Q. Any reason why not?</p> <p>21 A. It's not necessary.</p> <p>22 Q. Why isn't it necessary?</p> <p>23 A. For the information I need, the photographs</p> <p>24 of the incident dryer post fire, and then</p>	<p style="text-align: right;">25</p> <p>1 A. Various cases that I have been involved</p> <p>2 with. Sometimes Mike Stoddard has them in stock,</p> <p>3 and he sends me pictures of them, when I want them.</p> <p>4 Sometimes I pull them off the web. I think that's</p> <p>5 the three main ways.</p> <p>6 Q. Do you have an understanding where the</p> <p>7 labels, the on-product labels, were located on the</p> <p>8 Clouds' dryer prefire?</p> <p>9 A. Generally, yes.</p> <p>10 Q. Okay. And, what's your general</p> <p>11 understanding?</p> <p>12 A. There was a label on the inside door frame.</p> <p>13 I don't know what you want to call that one, but</p> <p>14 it's a -- kind of a tall skinny one.</p> <p>15 And then there was a label on the back of</p> <p>16 the dryer adjacent to the -- this one was a gas</p> <p>17 dryer, so it's typically in the middle -- kind of</p> <p>18 middle center of the back of the dryer on a gas</p> <p>19 dryer.</p> <p>20 There is also, typically, a model serial</p> <p>21 number label that is, again, on the inside door</p> <p>22 frame.</p> <p>23 And, then there's sometimes a mobile home</p> <p>24 warning, that's on the inside frame, but I'm not</p>

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<p style="text-align: right;">26</p> <p>1 listing that in this report. So, it may not have 2 been on this particular model. 3 Q. So, we have the label inside the door frame? 4 A. Two labels inside the door frame. 5 Q. Two labels inside the door frame. 6 A. Maybe, a third. 7 Q. Maybe, a third. So, there would be the one 8 that's long and skinny? 9 A. That's the warning label. 10 Q. And, then we have the model and serial 11 number, we'll call it, plate. 12 A. Sometimes it's a plate; sometimes it's a 13 label. I've got it noted in my report as a label. 14 Q. Okay. I'll use your word. So, the model 15 and serial number label. 16 And, then what would be the third? 17 A. The third one is, at times there's a 18 statement regarding installation in mobile homes. 19 But, it's not always listed as a -- see, the problem 20 is that the labels are destroyed in the fire quite 21 often, so we know what's generally on there. But 22 then Electrolux produces what they say was on there, 23 and sometimes they produce the mobile home label, 24 and sometimes they don't. So, I don't know if it's</p>	<p style="text-align: right;">28</p> <p>1 A. To my understanding, that one was also black 2 and white. 3 Q. And with regard to both labels, where did 4 your understanding that they were black and white 5 come from? Is that from seeing the unburned 6 Exemplar dryers? 7 A. Well, they were off the -- I'm sorry. It 8 would have been through the Electrolux information 9 produced in discovery, and my conversations with 10 Mike Stoddard regarding the timeframe of when the 11 dryers were manufactured. 12 Q. And, what's your understanding of when the 13 Clouds' dryer was manufactured? 14 A. June, 2003. 15 Q. Okay. Dr. Vigilante, have you written any 16 articles, or published any work, regarding warnings 17 on clothes dryers? 18 A. Not specifically to clothes dryers. 19 Q. Generally as to clothes dryers? 20 A. Well, I have done a number of research 21 studies, and published that data, in respect to how 22 to present warnings, and the factors that affect the 23 adequacy of product warnings, which would be 24 applicable to clothes dryers, but nothing specific</p>
<p style="text-align: right;">27</p> <p>1 an issue with the litigation process, or if it's 2 something that they don't put on all the dryers. 3 But it wasn't produced in this case, that I'm aware 4 of. 5 Q. Okay. Have you seen a color -- I'll refer 6 to it as a color version of the label inside the 7 door frame? 8 A. That's kind of a trick question. So, I have 9 seen colored versions of it, and I have seen 10 black-and-white versions of it. And, again, 11 Electrolux has used, over the years, different 12 versions of that label. 13 I've got it noted in my report that the 14 majority of the label was printed in black text on a 15 white background. However, there were signal words 16 "warning" in French and Spanish, along with the 17 words "do not" were printed in white text on a black 18 background. And, then there is an 800 number also 19 provided in white text on a black background. 20 So it's my understanding the label, that was 21 on this dryer, did not have any color other than 22 black and white. 23 Q. Okay. And how about the label on the back 24 of the dryer, did that have any color, if you know?</p>	<p style="text-align: right;">29</p> <p>1 for clothes dryers. 2 Q. Okay. Is that listed on your CV? 3 A. Yes. 4 MS. YEMMA: Okay. So I will mark 5 this as Vigilante-5. 6 (Current CV dated 7/18/16 marked 7 Vigilante Exhibit No. 5 for identification.) 8 BY MS. YEMMA: 9 Q. And, you have a copy in front of you; right? 10 A. Yes, Ma'am. 11 Q. So if you could point out the articles you 12 were just referencing, I would appreciate it. 13 A. Sure. Starting on Page 5, the second 14 article, the third article, the fourth article, and 15 the fifth article, would be generally related to the 16 topic of presenting more information for dryers. 17 Q. Are those articles, 2 through 5, are they 18 publicly available? 19 A. Yes. 20 Q. I can search them on Google? 21 A. Yes. 22 Q. Okay. Any other articles on your CV? 23 A. On Page 6. 24 Q. Okay.</p>

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<p style="text-align: right;">30</p> <p>1 A. Starting from Vigilante 1998, Vigilante 2 1997 -- I think those are the two on Page 6. 3 There's two other articles on Page 6, but I 4 just can't remember what they were. They dealt with 5 hazard perceptions of consumer products. They may 6 be related, but I just can't remember what's in 7 those articles at this moment. 8 Q. Okay. 9 A. Page 7, Vigilante/Wogalter, '99; 10 Vigilante/Wogalter, '98; Vigilante/Wogalter, '97; 11 Vigilante/Wogalter, '96. 12 Q. They're two articles 1997. 13 A. I'm sorry. 14 Q. Is it both of those? 15 A. Yes. 16 Q. Okay. And -- 17 A. No. I'm sorry, the first one. 18 Q. Okay. 19 A. On the Prioritization of Safety Warnings in 20 Product Manuals. 21 Vigilante/Wogalter, '96, again the ordering 22 of safety warnings in product manuals; Wogalter, 23 Conzola and Vigilante both 2006, and 1999. 24 Page 8, all of the publications and</p>	<p style="text-align: right;">32</p> <p>1 information that they already know, and then 2 dismissing the rest of the list. 3 So, this happens a lot with products that 4 fall under some standard, like a UL standard, or an 5 ANSI standard, where there's a list of warnings that 6 are required for all products that meet that 7 standard. 8 What generally happens is the agencies, that 9 built that list through the years, and it always 10 starts off, particularly with electrical products, 11 "Do Not Get Wet", "Don't Expose to Water", and 12 things of that nature. And, what the manufacturer 13 ends up doing is putting that list in there in the 14 manner in which the standards body presented it, and 15 then putting their unique, unknown hazards later in 16 the list. 17 So, of course, when a user gets it, and they 18 start seeing stuff that's open and obvious, they 19 just dismiss the rest of the list, and never get to 20 those unique and non open and obvious hazards. 21 Q. In conjunction with those articles, did you 22 do any testing? 23 A. They were based upon running subjects 24 through an experiment.</p>
<p style="text-align: right;">31</p> <p>1 presentations listed on the top of Page 8 prior to 2 the Technical Reports. 3 Q. On Page 7, the article that's called "On the 4 Prioritization of Safety Warnings in Product 5 Manuals," and I guess there are two parts. There's 6 also one in 1996 that has a similar title, "The of 7 Safety Warnings in Product Manuals," do see that? 8 A. Yes. 9 Q. Can you sum up in a nutshell what those 10 articles say? 11 A. Yes. I did a string of studies related to 12 presenting safety information and warnings in 13 product manuals. And, basically, what the studies 14 find is that the manner in which you present 15 critical safety information will affect the 16 likelihood and chance that a user, a product user, 17 will see it, rate it, and then have a chance to 18 comply with it. 19 So one of the recommendations was that you 20 need to put the most important, and least likely to 21 be of known information, that is not open and 22 obvious, first in your presentation of safety 23 warnings. Otherwise, you run the risk of readers -- 24 users reading being presented with open and obvious</p>	<p style="text-align: right;">33</p> <p>1 Q. So when you say "running subjects through an 2 experiment," we're talking about live people; right? 3 A. Yes. 4 Q. Okay. And, can you explain the experiment? 5 A. There are multiple experiments that were 6 done. Some of them looked at having the subjects -- 7 if I remember correctly, we provided individual 8 statements from product manuals. We had them rank 9 them by obviousness, rank them by hazardous, and 10 then rank them by preferred way of being presented 11 with the information. 12 And, then we compared it to what the -- the 13 preferred way of ranking it to what the 14 manufacturers had done. 15 And then later studies, the experiments were 16 set up where we took the manuals for the products, 17 and manipulated the way in which the warning lists 18 at the front of the manuals were presented, and 19 looked at the amount of time that people spent 20 reading the manuals, and the warnings, the amount of 21 information they were able to recall, and recognize, 22 from the manual, and then self-reported behavior, I 23 believe, of how much of the warnings, and 24 information, they read.</p>

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<p style="text-align: right;">34</p> <p>1 Q. What type of product, or products, are</p> <p>2 involved in those studies?</p> <p>3 A. They were mostly power tools.</p> <p>4 Q. And, were you directly involved in</p> <p>5 conducting the studies?</p> <p>6 A. Yes.</p> <p>7 Q. And, were you working with others in</p> <p>8 carrying out the studies, or working by yourself?</p> <p>9 A. I had help.</p> <p>10 Q. Okay. Is this when you were in graduate</p> <p>11 school, that timeframe?</p> <p>12 A. Yes.</p> <p>13 Q. What conclusions, if any, did you draw after</p> <p>14 conducting those studies with regard to the</p> <p>15 Prioritization of Warnings in Owner's Manuals?</p> <p>16 A. Again, you need to present the important non</p> <p>17 open, and obvious, hazards first. If you present</p> <p>18 product users with well-known, or open and obvious</p> <p>19 hazards in your list of warnings, they're going to</p> <p>20 stop reading them, and they'll never get to the</p> <p>21 unique non open and obvious hazards associated with</p> <p>22 the product.</p> <p>23 Q. So with regard to power tools, what would be</p> <p>24 an example of a not open and obvious hazard, if you</p>	<p style="text-align: right;">36</p> <p>1 to go.</p> <p>2 Q. Was that, in Vitale, we talked about the</p> <p>3 IdeaScan?</p> <p>4 A. Yes. That would be an example.</p> <p>5 Q. Okay, an example.</p> <p>6 Were there other products at IBM that you</p> <p>7 worked on with regard to the adequacy of on-product</p> <p>8 warnings?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. What were some other examples?</p> <p>11 A. I think we also, maybe -- I don't remember</p> <p>12 what else we talked about in Vitale, but the</p> <p>13 scanners. I did work on warnings for keyboards;</p> <p>14 warnings for computer monitors; warnings for tape</p> <p>15 drives, for wireless PCM cards; warnings for our</p> <p>16 storage systems.</p> <p>17 I did work on the QuickStart guides for</p> <p>18 computers, and a bunch of the peripherals that are</p> <p>19 attached to computers, like input devices, mice</p> <p>20 keyboards, monitors, cameras, things like that.</p> <p>21 I don't recall anymore at the moment.</p> <p>22 They're the ones that are easily popping into my</p> <p>23 mind.</p> <p>24 Q. So with regard to products at IBM, did any</p>
<p style="text-align: right;">35</p> <p>1 remember? I know we're going back.</p> <p>2 A. I can't think of anything offhand. There</p> <p>3 might be, for example, a potential for a spark,</p> <p>4 maybe. But a non open and obvious is easier. It's</p> <p>5 something like, don't use in -- don't expose to</p> <p>6 water, or something like that. But, I don't recall</p> <p>7 exactly what the non open and obvious ones were.</p> <p>8 Q. So the studies that you performed, it seems</p> <p>9 like they were focused solely on the information</p> <p>10 contained in the manual as opposed to on-product</p> <p>11 labels; is that correct?</p> <p>12 A. For that series of studies, it was.</p> <p>13 Q. Okay. Have you conducted any studies having</p> <p>14 to do with the adequacy of on-product labels?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And, what studies have you performed?</p> <p>17 A. In graduate school, I've done studies on the</p> <p>18 factors that affect readability, reading</p> <p>19 comprehension, likelihood of seeing the information.</p> <p>20 When I was with IBM, I looked at, again,</p> <p>21 adequacy of on-product warning labels, and how to be</p> <p>22 sure that I was providing a warning that would grab</p> <p>23 people's attention, and would get them to change</p> <p>24 their behavior towards the direction I wanted them</p>	<p style="text-align: right;">37</p> <p>1 of them involve a risk of fire?</p> <p>2 A. Most of them were risk -- no, I don't</p> <p>3 believe any of them were risk of fire.</p> <p>4 Q. Okay. Let's go back to when you were in</p> <p>5 grad school, and you talked about doing studies with</p> <p>6 regard to on-product warnings.</p> <p>7 Were there any articles published as a</p> <p>8 result of that research?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Can you point me to those in your CV?</p> <p>11 A. Sure. We went through a bunch of it</p> <p>12 earlier.</p> <p>13 On Page 5, the first is Joyce, 1999. On</p> <p>14 Page 6, -- none on Page 6 were on-product warnings</p> <p>15 in graduate school. There is one dealing with</p> <p>16 on-product warnings, but it was done last year.</p> <p>17 Q. Which one is that?</p> <p>18 A. The Nemire and Vigilante.</p> <p>19 Q. The one at the top, okay. That would be</p> <p>20 2015.</p> <p>21 A. Page 7, Vigilante/Wogalter, '99;</p> <p>22 Vigilante/Wogalter, '98; Vigilante/Wogalter, '97,</p> <p>23 The Preferred Order of Over-the-Counter</p> <p>24 Pharmaceutical Label Components. The next one,</p>

10 (Pages 34 to 37)

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<p style="text-align: right;">38</p> <p>1 Vigilante/Wogalter, '96 is related to that set of 2 studies. 3 1999, Vigilante, Konzola, and Vigilante was 4 in grad school. And, 2006 was a continuation of 5 that work in 2006 after graduate school. 6 Q. So the one in 1999, "Applying Usability 7 Engineering Principles", the last one on the page -- 8 A. Yes. 9 Q. -- that one is related to 2006, Chapter 38? 10 A. Yes. The '99 was a result of a -- it was 11 one of my preliminary examination questions from one 12 of my committee members. And after I put it 13 together, my advisor asked me to publish it. So, we 14 submitted it for publication to ANSI Z535 as an 15 addendum to the Z535.4 standard. It was not 16 accepted in the form. So I went, and with the help 17 of Mr. Konzola, presented it, and published it, at 18 the Human Factor and Ergonomics Annual Meeting. And 19 then for the 2006 textbook chapter, we just expanded 20 upon the original work that was published in '99. 21 Q. So, in conjunction with that work, were you 22 looking at specific products? 23 A. There was guidelines for designing warnings 24 for all different types of products, consumer and</p>	<p style="text-align: right;">40</p> <p>1 do with over-the-counter medications. 2 A. The three main lines of research I was 3 responsible for were the product manuals, and the 4 ordering of information product manuals; the 5 formatting of warning labels for over-the-counter 6 medications, and then the presentation of risk and 7 benefit information websites for direct consumer 8 advertisements of prescription pharmaceuticals. 9 So, that's why there's a lot of articles 10 related to those topics. 11 Q. So with regard to the second category of 12 formatting the labels for the over-the-counter 13 medication, are we talking about, like, what's 14 directly on the bottle, or what's on the packaging, 15 or both? 16 A. So the studies involve -- when they were 17 products, actual products used, the studies involved 18 the bottles. 19 Some of the studies, I believe, were more 20 mockup, paper/pencil mockup of labels, so there 21 wasn't an actual container involved. 22 But when a physical container or product was 23 involved, it was the actual product. 24 Q. Okay. And, what type of studies did you</p>
<p style="text-align: right;">39</p> <p>1 commercial. 2 Q. General, not specific to any product? 3 A. Correct. 4 Q. Okay. 5 A. They're techniques and tools that are 6 applicable to all warnings. 7 Q. Anything on Page 8 with regard to on-product 8 warnings? 9 A. On Page 8, the top one was associated with 10 the ANSI headers. So, like, warning, danger, 11 caution. But, it wasn't specific to on-product. It 12 could be on-product, or it could be solely a safety 13 sign, as well. 14 2006 was not during grad school. 2003 was 15 after grad school. 2001 was finishing grad school. 16 So, they were all related to -- the 2003 and 2001 17 were related to formatting label information to 18 facilitate knowledge acquisition and readability by 19 both younger and older adults. 20 Q. Okay. What type of products were involved 21 in that article? 22 A. In that study, they were over-the-counter 23 medication labels. 24 Q. It looks like a lot of the articles have to</p>	<p style="text-align: right;">41</p> <p>1 perform with regard to the on-product labels for 2 over-the-counter medications? 3 A. There were multiple over the years. They 4 looked at presentation of information on the product 5 labels, preferred presentation of information. And, 6 the results were very similar to the work on the 7 product manuals where people were looking for stuff 8 that they didn't know, and stuff related to usage 9 that they didn't know, to be given higher priority, 10 and how it's presented on the product than 11 information that was not relevant to them, or stuff 12 that they didn't care about, or already knew. 13 Two, the other big line of that research was 14 how to present information on the labels to make 15 sure people are able to notice it's there, be able 16 to facilitate reading. So, particularly with 17 elderly, or older users, smaller prints create big 18 problems. The use of wide spacing, and bulleted 19 lists, again facilitates reading. And anytime you 20 can facilitate reading of a product label, product 21 warning label, you are going to increase the number 22 of people that actually read the entire label. 23 So if you do not provide those facilitation 24 techniques, people either ignore, or they stop</p>

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<p style="text-align: right;">42</p> <p>1 reading the label, or they can't read the label.</p> <p>2 Q. How did you go about evaluating that? I</p> <p>3 mean, there are people involved in the study;</p> <p>4 correct?</p> <p>5 A. Most of them were experiments that involved</p> <p>6 live subjects.</p> <p>7 Q. Okay. If we can imagine a bottle of</p> <p>8 medication, there is less real estate, for lack of a</p> <p>9 better description, than on a power tool, for</p> <p>10 example. Do you agree?</p> <p>11 A. Well, yes. Typically, the medication</p> <p>12 product containers vary in size. So, there's</p> <p>13 small -- as the Advil container -- travel size, up</p> <p>14 to, maybe, a gallon jug, depending upon what it is.</p> <p>15 So one of the things that we looked at and then</p> <p>16 recommended based upon the study was to use, what</p> <p>17 are called, pullout labels now. And, it's not</p> <p>18 really relevant to something as large as a dryer</p> <p>19 where you have a lot of label space. But if we're</p> <p>20 looking at smaller containers, whether they be</p> <p>21 medications, or chemicals, that you find at Home</p> <p>22 Depot, or Lowe's, places like that, if you use a</p> <p>23 pullout label, you can greatly expand the amount of</p> <p>24 real estate you have to present the information, and</p>	<p style="text-align: right;">44</p> <p>1 labels like that, it's because they're presenting</p> <p>2 both the information in better format, but it's also</p> <p>3 because they're also providing it in Spanish and</p> <p>4 English -- or Spanish and French -- so, multiple</p> <p>5 languages. So, the pullout gives them greater real</p> <p>6 estate to present the information in three, or</p> <p>7 multiple languages.</p> <p>8 Q. So if there's a pullout label, would there</p> <p>9 still be instructions, or warnings, on the actual</p> <p>10 bottle?</p> <p>11 A. It is the bottle. So, it's a label is</p> <p>12 attached to the bottle.</p> <p>13 Q. I'm sorry, I misunderstood. So the label</p> <p>14 would encompass the whole bottle, but there would</p> <p>15 also be, I guess, a pullout section?</p> <p>16 A. Typically, the way it's used is there is a</p> <p>17 label on the front, a branding label, marketing</p> <p>18 label, with some warning information. And then the</p> <p>19 back label, that's affixed to the container, will</p> <p>20 pull out from the back of the container. But, the</p> <p>21 last page of the pullout is glued to, or adhered to,</p> <p>22 the container. So it just accords out from the</p> <p>23 container. And then when you're with it, you can</p> <p>24 put it back in, and reattach it.</p>
<p style="text-align: right;">43</p> <p>1 present it, and format it, in a way that will</p> <p>2 facilitate reading, and knowledge acquisition, and</p> <p>3 compliance.</p> <p>4 Q. The pullout label, is it in any way attached</p> <p>5 to the bottle?</p> <p>6 A. Yes.</p> <p>7 Q. How is it attached?</p> <p>8 A. The ones that we were using, it was as easy</p> <p>9 as taking a sheet of paper, folding it, and</p> <p>10 laminating it, and then putting a little bit of</p> <p>11 tacky glue on the corner to keep it closed.</p> <p>12 Manufacturers now have more, I've seen both</p> <p>13 prescription, and not prescription, medication and,</p> <p>14 again, products sold at Home Depot and Lowe's,</p> <p>15 whether they're paints, chemicals, stains, glues,</p> <p>16 adhesives, what have you, where they're more of,</p> <p>17 like, an accordion style where, again, they're</p> <p>18 initially, with a little bit of glue, glued closed,</p> <p>19 and then the user just -- there's usually an</p> <p>20 indicator that says "pull here", or "expand label</p> <p>21 here", or what have you, a direction where to pull,</p> <p>22 and then you pull the label out, and it'll accordion</p> <p>23 out.</p> <p>24 Typically, when they are using the accordion</p>	<p style="text-align: right;">45</p> <p>1 Q. Can you tear off the pullout label?</p> <p>2 A. Sure, you can, yes.</p> <p>3 Q. Again, if you tore off the label, there are</p> <p>4 no warnings that are left on the bottle; is that</p> <p>5 correct?</p> <p>6 A. Whatever is on the front, and then whatever</p> <p>7 is on the back page that is still stuck to the</p> <p>8 label.</p> <p>9 But if you tear off the label, it would be</p> <p>10 missing.</p> <p>11 Q. Okay. Are there any studies that you</p> <p>12 participate in, or articles that you published, that</p> <p>13 have to do with on-product warnings, not on</p> <p>14 over-the-counter medication, either in grad school,</p> <p>15 or after?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And, what would those be?</p> <p>18 A. I can do it chronologically. In grad</p> <p>19 school, we looked at on-product warnings for such</p> <p>20 things as car seats, file cabinets, keyboards,</p> <p>21 battery jumper cables. Those are ones that are</p> <p>22 popping to mind from grad school.</p> <p>23 At IBM, we went through those earlier. They</p> <p>24 ran the gamut from scanners to wireless PC cards,</p>

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<p style="text-align: right;">46</p> <p>1 tape drives, the monitors, the keyboards, the mice, 2 tape drives to storage systems. 3 Q. And then after IBM, anything? 4 A. After IBM, I haven't done -- after IBM, the 5 studies I've done have been more heuristic testing, 6 more hallway testing, on-product labels. 7 So I have been retained on behalf of several 8 manufacturers to look at, and assess, and provide, 9 recommendations to either their on-product 10 labelling, or their accompanying literature. 11 Q. Can you list those companies for me? 12 A. I did a railing, a decorative railing, for a 13 company that was -- I don't remember the name of the 14 company, but they were sold at Home Depot. And, I 15 got involved with it as a forensic case. 16 And then after the forensic case, the 17 manufacturer asked me for recommendations on redoing 18 their literature. 19 Q. Were you retained by the manufacturer in -- 20 A. In that case? 21 Q. Right. 22 A. Yes. 23 Q. Okay. 24 A. I did a horse training bridle for a company</p>	<p style="text-align: right;">48</p> <p>1 Q. What about with regard to the others, did 2 they have anything to do with litigation, or outside 3 of litigation, if you can recall? 4 A. The only one I recall is the shooting 5 target. I got that as a referral from a client that 6 I did work for on a personal injury case. 7 And the guy, who developed the reusable 8 target system, was a friend of his, maybe a 9 friend-client, and that's how I got referred to that 10 case. 11 Q. But the reusable target wasn't at issue in a 12 lawsuit? 13 A. No. 14 Q. Okay. So when you were retained by the 15 manufacturers, what were you asked to do, in 16 general? 17 A. Generally is assess the warnings for 18 products, give recommendations on how to improve 19 them, point out where their shortcomings were. 20 Q. So, these were all products that had 21 on-product warnings? 22 A. Had them, or were going to have. 23 The decorative railing, it was the company 24 material. The railing, itself, didn't have any</p>
<p style="text-align: right;">47</p> <p>1 a number of years ago. I did warnings for a 2 trailer-based tree chipper machine. I did the 3 packaging warnings for a kitty litter product. I 4 did warnings for a snow removal device, that's 5 attached to a forklift, for removing snow from the 6 top of tractor-trailers. 7 I assessed warnings for an amusement ride 8 involving UTV's. I did warnings for a shooting 9 target. 10 Q. I think we talked about that in Vitale, the 11 target, a reusable target? 12 A. Yes, reusable target. 13 Q. Anything else, that you can think of? 14 A. Nothing else is coming to mind at the 15 moment. 16 Q. So the list that you just gave me, starting 17 with the decorative railing through the reusable 18 target, are these all situations where you have been 19 retained by a product manufacturer? 20 A. Yes. 21 Q. Now, I know you mentioned the decorative 22 railing initially started with in conjunction with 23 litigation. 24 A. Yes.</p>	<p style="text-align: right;">49</p> <p>1 warnings. 2 And, then the training bridle for the horse 3 was also the company literature; it, itself, didn't 4 have any on-product warnings. 5 Q. Okay. Let's talk about the railing. 6 So, you said that it did not have any 7 on-product warnings? 8 A. Not that I recall. 9 Q. And the lawsuit, that you were initially 10 involved in, did that involve an injury to someone, 11 if you recall? 12 A. I don't recall, but I imagine it did. 13 Q. Do you remember how the person was injured 14 with regard to the railing, or allegedly injured? 15 A. Yes. They used the railing as a support 16 structure, and it was intended for a decorative, non 17 elevated use. So if you go out to a balcony at a 18 hotel, let's say, and there's a railing in front of 19 you, it should be designed for load bearing to use 20 as a guard to keep people from falling off the 21 elevation. 22 The railing -- part of the problem with the 23 railing was that it looked like a railing, it looked 24 like a railing you put up on a porch, or a balcony,</p>

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<p style="text-align: right;">50</p> <p>1 but it wasn't designed to be load bearing. So if</p> <p>2 there was any pressure put against it, it would</p> <p>3 fail. And I think what happened in the case is that</p> <p>4 somebody bought it, and used it in an elevated</p> <p>5 position as a barrier, and it failed.</p> <p>6 Q. And the work you did after the litigation,</p> <p>7 did you recommend that an on-product label be added</p> <p>8 to the decorative railing?</p> <p>9 A. I don't recall.</p> <p>10 Q. Okay. How about the training bridle, that</p> <p>11 product did not have an on-product warning at the</p> <p>12 beginning of your retention?</p> <p>13 A. It didn't.</p> <p>14 Q. Okay. And, what were you asked to do by the</p> <p>15 manufacturer with regard to that product?</p> <p>16 A. They were in the process of designing, and</p> <p>17 developing, the product. It was the first of its</p> <p>18 kind. So they asked me to come in, and look at the</p> <p>19 material that they were planning on providing with</p> <p>20 it, both with the -- I can't remember exactly how it</p> <p>21 was sold, but it was sold in a container, a</p> <p>22 packaging. I don't remember exactly if it was</p> <p>23 rigid, or nonrigid, but there were instructions that</p> <p>24 went with the package.</p>	<p style="text-align: right;">52</p> <p>1 associated with the product, and the simplicity of</p> <p>2 the product.</p> <p>3 Q. How did you reach that conclusion with</p> <p>4 regard to marketing materials?</p> <p>5 A. Specifically, I don't recall. Generally, it</p> <p>6 would be in conjunction with having an understanding</p> <p>7 of how the product was used, who was going to use</p> <p>8 the product, who it was intended to be used by,</p> <p>9 where it was intended to be used by. And, then</p> <p>10 looking at what the intentions of the product</p> <p>11 designer and seller were to the way they were</p> <p>12 marketing the product.</p> <p>13 So, the product was intended for use by</p> <p>14 experienced trainers. But the way they marketed the</p> <p>15 product, it gave the impression that it could be</p> <p>16 used by inexperienced people. And if it's a product</p> <p>17 that is meant for folks having a certain level of</p> <p>18 training and experience, you can't market it as</p> <p>19 something that anybody can go and pick up and train</p> <p>20 a horse with.</p> <p>21 Q. Did you conduct any studies with the last</p> <p>22 subject in conjunction with your retention by the</p> <p>23 product manufacturer?</p> <p>24 A. If I did any, it would have been hallway</p>
<p style="text-align: right;">51</p> <p>1 And then there was marketing material that</p> <p>2 they were looking at, how they were going to market</p> <p>3 it. And, they asked me to look at both the</p> <p>4 instructions and warnings in the literature that was</p> <p>5 provided with the product, and also the marketing</p> <p>6 information.</p> <p>7 Q. So with regard to the items that you looked</p> <p>8 at, the instructions, and warnings, and the</p> <p>9 marketing material, did you make any recommendation,</p> <p>10 or any changes, with regard to those materials?</p> <p>11 A. I did.</p> <p>12 Q. And, were they accepted by the manufacturer?</p> <p>13 A. As far as I know.</p> <p>14 Q. Okay. Do you know if the products were in</p> <p>15 use?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. And, what were your recommendations?</p> <p>18 A. I don't remember specifically. I can tell</p> <p>19 with the --</p> <p>20 Q. Generally is fine.</p> <p>21 A. -- with the marketing stuff, they were</p> <p>22 making -- they were making claims that weren't</p> <p>23 realistic. And, so, I had concerns that they would</p> <p>24 be setting people up for misperceiving the hazard</p>	<p style="text-align: right;">53</p> <p>1 testing at Robson.</p> <p>2 Q. How do you define hallway testing?</p> <p>3 A. Basically, taking the information you're</p> <p>4 assessing, either existing, or your proposed</p> <p>5 changes, and running by colleagues that are</p> <p>6 accessible in the next office, down the hallway, and</p> <p>7 so forth.</p> <p>8 Q. In your profession, is that an acceptable</p> <p>9 method of evaluating a warning, the adequacy of a</p> <p>10 warning?</p> <p>11 A. Sure. It's a tool.</p> <p>12 Q. What other tools are available to assess</p> <p>13 adequacy of a warning?</p> <p>14 A. There's heuristic testing, which is</p> <p>15 essentially a review of the material by a person</p> <p>16 trained in the subject matter. So if it's a</p> <p>17 warnings issue, someone who's got a warnings</p> <p>18 background that train in the issues related to</p> <p>19 warnings.</p> <p>20 There's comparison with standards, and the</p> <p>21 guidelines and literature that are out there related</p> <p>22 to warnings, if it's a warning, and the product at</p> <p>23 issue.</p> <p>24 There's hallway testing. There's paper and</p>

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<p style="text-align: right;">54</p> <p>1 pencil, or mockup testing, where you're creating</p> <p>2 mockups with basically a sheet of paper with some</p> <p>3 thoughts and drawings on it.</p> <p>4 There is more formal experimentation with</p> <p>5 live subjects, as in usability testing, where you're</p> <p>6 bringing folks into a usability lab, or a lab, and</p> <p>7 presenting them with a product and/or warnings.</p> <p>8 There's focus group assessments that can be</p> <p>9 done. There's competitive evaluation where you're</p> <p>10 evaluating your product, or your warning, against</p> <p>11 those provided by competitors.</p> <p>12 There's benchmark evaluation where you set a</p> <p>13 set of requirements at the start of development, and</p> <p>14 then at the end of development determine whether or</p> <p>15 not you've met those requirements.</p> <p>16 So, there's multiple different ways to go</p> <p>17 about assessing both product design, and warnings.</p> <p>18 Q. Do you have a favorite?</p> <p>19 A. It just depends on what's applicable to the</p> <p>20 situation.</p> <p>21 Q. How do you decide that?</p> <p>22 A. It's decided based upon the material that's</p> <p>23 being assessed. It's probably based upon timeframe.</p> <p>24 It could be based upon resources. There's multiple</p>	<p style="text-align: right;">56</p> <p>1 Q. Okay. With regard to any of the other</p> <p>2 products that we talked about, did you use any</p> <p>3 usability testing?</p> <p>4 A. Not for the ones that we just went through.</p> <p>5 Q. Have you used usability testing to assess</p> <p>6 the adequacy of on-product labels?</p> <p>7 A. Sure.</p> <p>8 Q. When have you used usability testing?</p> <p>9 A. When I was with IBM.</p> <p>10 Q. Okay.</p> <p>11 MR. LEVINE: Since you paused for a</p> <p>12 second, it is 11:35, and I have a lunch menu</p> <p>13 here.</p> <p>14 MS. YEMMA: Sure. We can take a</p> <p>15 few-minutes break.</p> <p>16 (Short recess.)</p> <p>17 MS. YEMMA: Dr. Vigilante, before</p> <p>18 we go any further, I'm going to mark your</p> <p>19 current testimony list as Vigilante-6. And,</p> <p>20 that's dated August 17th, 2016.</p> <p>21 And, I will show it to you.</p> <p>22 (Dr. Vigilante's current testimony</p> <p>23 list dated 8/17/16 marked Vigilante Exhibit</p> <p>24 No. 6 for identification.)</p>
<p style="text-align: right;">55</p> <p>1 things that can come into play.</p> <p>2 Q. Are there advantages, and disadvantages, of</p> <p>3 each method?</p> <p>4 A. Sure.</p> <p>5 Q. Okay. So with regard to the horse -- am I</p> <p>6 calling the right -- horse training bridle? That's</p> <p>7 what I wrote down.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. The horse training bridle, you chose</p> <p>10 to do the hallway testing; is that right?</p> <p>11 A. I may have if I did a live testing, a live</p> <p>12 person testing.</p> <p>13 MR. LEVINE: Yes, not live horses.</p> <p>14 THE WITNESS: No.</p> <p>15 MR. LEVINE: Please, be specific.</p> <p>16 MS. YEMMA: That's very important,</p> <p>17 yes.</p> <p>18 BY MS. YEMMA:</p> <p>19 Q. And if you had chosen to do the hallway</p> <p>20 testing, because I know you're not sure, do you know</p> <p>21 why you would have chosen to do that over one of the</p> <p>22 other methods you just listed for me?</p> <p>23 A. Convenience is often a reason to use them.</p> <p>24 So, that might have come into play.</p>	<p style="text-align: right;">57</p> <p>1 BY MS. YEMMA:</p> <p>2 Q. Is that your current testimony list.</p> <p>3 A. It is not.</p> <p>4 Q. It is not?</p> <p>5 MR. LEVINE: The one I printed up</p> <p>6 was not?</p> <p>7 THE WITNESS: Oh, sorry. There was</p> <p>8 one more deposition I added. And, you know</p> <p>9 what I did -- I know what I did. Here you</p> <p>10 go. It is this page. So, there's a page 7</p> <p>11 of 7.</p> <p>12 MS. YEMMA: Yes, I think it's</p> <p>13 missing a page because it's 6 of 7. So, is</p> <p>14 it just missing the last page?</p> <p>15 THE WITNESS: I think so, yes.</p> <p>16 MS. YEMMA: Okay. So we just need</p> <p>17 to copy that page, and attach it to the</p> <p>18 exhibit. So, let's do that.</p> <p>19 THE WITNESS: Now, the electronic</p> <p>20 copy you have, I think only has 6 pages of</p> <p>21 text.</p> <p>22 MS. YEMMA: Even though it says 6</p> <p>23 of ??</p> <p>24 THE WITNESS: Yes. There might</p>

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<p style="text-align: right;">58</p> <p>1 have been, like, a -- I mean, the page 2 number is put on there automatically so I 3 think there was, like, an extra space 4 because my PDF has 6 of 7, too. 5 So, I don't know what happened. I 6 think it's just a formatting issue. 7 MS. YEMMA: Okay. Ken, would you 8 be so kind to copy that last page for us? 9 MR. LEVINE: Sure. 10 THE WITNESS: Sorry about that. 11 MS. YEMMA: That's okay. 12 MR. LEVINE: You can keep going. 13 MS. YEMMA: Okay. 14 BY MS. YEMMA: 15 Q. Dr. Vigilante, so for the record, we have 16 marked as Vigilante-6 the last four years of your 17 testimony; is that correct? 18 A. With the addition of Page 7, yes. 19 Q. Right. So when Mr. Levine gets back with 20 that Page 7, we will have a complete copy; is that 21 correct? 22 A. Yes. 23 Q. Okay. So, I deposed you in April of 2016 in 24 the Vitale case. It looks like there were six times</p>	<p style="text-align: right;">60</p> <p>1 But, it was a roadway case. 2 Q. Other than the cases that have involved 3 Electrolux dryers, have you ever given testimony, 4 whether in deposition, or at trial, in a case 5 involving a clothes dryer? 6 A. Yes. 7 Q. And, are those cases on your testimony list? 8 A. No. 9 Q. Do you remember the names of any of those 10 cases? 11 A. No. I know -- yes and no. One of the 12 cases, I think it was either a Maytag, or a 13 Whirlpool, I think, and it involved spontaneous 14 combustion. 15 Q. And, who were you retained by in that case, 16 if you recall? 17 A. I wasn't working for a manufacturer, so I 18 don't recall if it was the property owner, 19 subrogation company, another defendant. 20 Q. Okay. So it could have been a codefendant? 21 A. It might have been. 22 Q. Okay. But, it wasn't the product 23 manufacturer? 24 A. That's correct.</p>
<p style="text-align: right;">59</p> <p>1 you gave testimony since then; is that correct? 2 A. Yes. 3 Q. Okay. Did any of those cases involve 4 clothes dryers? 5 A. No. 6 Q. Were you retained by the plaintiffs in all 7 those cases? 8 A. No. 9 Q. In which cases were you retained by the 10 defendant? 11 A. The last one on Page 6. 12 Q. And, that's Timothy Brugger versus Board of 13 County Road of Commissioners? 14 A. Yes. 15 Q. Okay. And, what did that case involve, if 16 you know, or remember? 17 A. That one involved a single vehicle 18 motorcycle crash on a rough road at night somewhere 19 in the state of Michigan. 20 Q. And, what was the product at issue, a 21 motorcycle? 22 A. The roadway. It wasn't really a products 23 case. It was a crash case, and there was issue 24 related to warnings for the condition of the road.</p>	<p style="text-align: right;">61</p> <p>1 Q. Okay. So was that the only time you have 2 been retained, other than in an Electrolux case, in 3 a case involving clothes dryers? 4 A. That I gave testimony in? 5 Q. Yes, I'm sorry, that you have given 6 testimony in? 7 A. I believe so. 8 Q. And, I don't think I have asked you this: 9 Have you ever been retained, other than the case 10 involving Maytag, or Whirlpool, in a spontaneous 11 combustion, in a case involving a clothes dryer, 12 other than the Electrolux cases? 13 A. Yes. 14 Q. And, how many cases? 15 A. I'm going to say less than six. 16 Q. And in those cases, who were you retained 17 by? 18 A. I'm going to say either the property owner, 19 subrogation insurance company, or a third-party 20 defendant. 21 Q. In other words, you were not retained by the 22 product manufacturer? 23 A. That's correct. 24 Q. In those cases, did they all involve fires?</p>

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<p style="text-align: right;">62</p> <p>1 A. I believe so.</p> <p>2 Q. What was your role in those cases, if you</p> <p>3 can generalize?</p> <p>4 A. I don't recall all of the cases, but I'm</p> <p>5 going to imagine that there was some warnings</p> <p>6 aspect.</p> <p>7 Q. Do you recall if you were advocating for an</p> <p>8 on-product warning in any of those cases?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you know whether those cases involved, or</p> <p>11 allegedly involved, the ignition of lint as the</p> <p>12 cause of the fire?</p> <p>13 A. I think they were -- they would have been</p> <p>14 spontaneous combustion cases.</p> <p>15 Q. Were they all spontaneous combustion?</p> <p>16 A. I believe if any of them would be, they</p> <p>17 would be spontaneous combustion.</p> <p>18 Q. In those cases, you have not given -- I'm</p> <p>19 sorry.</p> <p>20 A. I was going to say, yes, I haven't given any</p> <p>21 testimony in those cases. I'm not sure that the</p> <p>22 dryer manufacturer was a defendant in all of those</p> <p>23 cases, if any of them.</p> <p>24 Q. Who do you think was the defendant in those</p>	<p style="text-align: right;">64</p> <p>1 manufacturer was a defendant in any of the cases, or</p> <p>2 if they were a codefendant in some of the cases. I</p> <p>3 just don't recall.</p> <p>4 Q. So where the vegetable oil, or the linseed</p> <p>5 oil, was involved, were you assessing the adequacy</p> <p>6 of the warnings on the vegetable oil, or the linseed</p> <p>7 oil?</p> <p>8 A. Or the chemical product, yes.</p> <p>9 Q. Or the chemical product. So, you weren't</p> <p>10 assessing the warnings on the dryer?</p> <p>11 A. I don't recall doing that.</p> <p>12 Q. Okay. Since I took your deposition in April</p> <p>13 of 2016, you have given testimony at trial; is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. In two cases?</p> <p>17 A. Yes.</p> <p>18 Q. And, was your testimony limited, or</p> <p>19 excluded, in any way in either of those cases, that</p> <p>20 you're aware of?</p> <p>21 A. It was limited in one.</p> <p>22 Q. And, was that in the Yazdani case?</p> <p>23 A. Yes.</p> <p>24 Q. And, were you retained by deLuca Levine in</p>
<p style="text-align: right;">63</p> <p>1 cases, as you sit here, if you recall?</p> <p>2 A. The ones I recall, at least one of the</p> <p>3 defendants, or the defendant I was focused on, would</p> <p>4 have been the manufacturer of the product that had</p> <p>5 the spontaneous combustion, or self-heating</p> <p>6 properties associated with it.</p> <p>7 Q. What type of products were involved, if you</p> <p>8 remember?</p> <p>9 A. I've done a couple involving, like, a</p> <p>10 vegetable oil or a linseed seed oil based product.</p> <p>11 Typically, oily rags, that have been laundered, and</p> <p>12 then dried, and then either left in the dryer, or</p> <p>13 folded, and stacked on top of the dryer. I remember</p> <p>14 those two scenarios.</p> <p>15 Q. So, was the manufacturer of the vegetable,</p> <p>16 or linseed oil, sued?</p> <p>17 A. That's my belief, yes.</p> <p>18 Q. Okay. Any other scenarios, that you can</p> <p>19 recall, with regard to spontaneous combustion, as to</p> <p>20 who the defendant was in those cases?</p> <p>21 A. Not offhand.</p> <p>22 Q. But, you don't believe it was the dryer</p> <p>23 manufacturer?</p> <p>24 A. Like I said, I don't know if the dryer</p>	<p style="text-align: right;">65</p> <p>1 that case?</p> <p>2 A. Yes.</p> <p>3 Q. And, that case involved a motorcycle?</p> <p>4 A. Yes.</p> <p>5 Q. What's your understanding of your opinions</p> <p>6 that were limited?</p> <p>7 A. I had multiple opinions, and some of them</p> <p>8 dealt with the suitability, or the reasonability, of</p> <p>9 the defendant to rely upon an owner's manual to</p> <p>10 communicate critical and atypical safety information</p> <p>11 for the bike because the defendant knew that</p> <p>12 multiple many users would purchase the motorcycle</p> <p>13 secondhand, or thirdhand, without the manual, or</p> <p>14 would ride the motorcycle without being provided</p> <p>15 with the manual.</p> <p>16 In the specifics of the case, the homeowner</p> <p>17 testified that he did receive the manual, and did</p> <p>18 read at least parts of the manual. So, the judge</p> <p>19 felt that it would be -- what's the word I'm looking</p> <p>20 for -- it would be unfair to be able to talk about</p> <p>21 the fact that BMW knew that many of their users</p> <p>22 weren't reading the manual, were not receiving the</p> <p>23 manual, and so forth, because in this case, the</p> <p>24 homeowner did receive the manual.</p>

17 (Pages 62 to 65)

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<p style="text-align: right;">66</p> <p>1 So any opinions related to the fact that BMW</p> <p>2 knew that people were not receiving the manual, or</p> <p>3 not given the manual, or did not have the manual, I</p> <p>4 wasn't allowed to talk about.</p> <p>5 Q. And the owner of the motorcycle, he was a</p> <p>6 secondhand user?</p> <p>7 A. He was actually the third owner of the</p> <p>8 motorcycle.</p> <p>9 Q. Okay. In other words, he wasn't the</p> <p>10 original owner?</p> <p>11 A. Correct.</p> <p>12 Q. But, he had received a manual?</p> <p>13 A. Yes.</p> <p>14 Q. It's my understanding that there was a fire</p> <p>15 in that case?</p> <p>16 A. Yes.</p> <p>17 Q. Can you explain the underlying facts any</p> <p>18 more specifically than that, at least your</p> <p>19 understanding of them?</p> <p>20 A. Sure. There is a defect in the design of</p> <p>21 the bike. They use an oil sight glass that's</p> <p>22 located at the bottom left corner of the crank case</p> <p>23 where it's in close vicinity to the exhaust header.</p> <p>24 And it is exposed to very high temperatures, that</p>	<p style="text-align: right;">68</p> <p>1 But, in any case, at the time after reading</p> <p>2 the manual, and the two years he owned the bike, he</p> <p>3 wasn't aware that leaving the bike idling at a</p> <p>4 standstill can result in the oil sight glass</p> <p>5 failing, and the bike catching on fire.</p> <p>6 Q. Apart from the opinions you just testified</p> <p>7 to, were there any other opinions of yours that were</p> <p>8 excluded at trial?</p> <p>9 A. No.</p> <p>10 Q. And, you were allowed to testify at trial</p> <p>11 subject to the Court's ruling?</p> <p>12 A. Yes.</p> <p>13 Q. Were your qualifications challenged in that</p> <p>14 case?</p> <p>15 A. I believe they were.</p> <p>16 Q. In the other case that you gave testimony</p> <p>17 in, the one in Maryland, Malone versus K&G Men's</p> <p>18 Company, was there any challenge to your testimony</p> <p>19 in that case, that you're aware?</p> <p>20 A. I'm not aware of any.</p> <p>21 Q. Have you ever given testimony either at</p> <p>22 trial, or in deposition, in support of a</p> <p>23 manufacturer's warnings?</p> <p>24 A. I would have to go through my list to see.</p>
<p style="text-align: right;">67</p> <p>1 are excessive of the deflection point, and failure</p> <p>2 point, of the glass that's sealed.</p> <p>3 When the bike is left idling, I believe at</p> <p>4 high idle, or elevated idle, the heat from the</p> <p>5 exhaust header, and the oil itself, can cause the</p> <p>6 oil sight glass to fail, allowing the oil, and the</p> <p>7 oil vapor, to escape, and ignite on the exhaust</p> <p>8 header.</p> <p>9 The length of time necessary to reach that</p> <p>10 failure point had varied from anywhere from 10</p> <p>11 minutes to I believe the homeowner in this case</p> <p>12 testified that he may have left the bike idle for</p> <p>13 over a half hour.</p> <p>14 To address the issue, BMW claimed that they</p> <p>15 had placed two statements in their -- I think it was</p> <p>16 an 82-page, or 85-page, manual that didn't</p> <p>17 specifically, or explicitly, address the hazard.</p> <p>18 And, the homeowner, bike owner, testified</p> <p>19 that when he read the manual, he doesn't recall if</p> <p>20 he had read those two pages of the manual; if he had</p> <p>21 read those two pages of the manual, if he had read</p> <p>22 those statements, and if he had read those</p> <p>23 statements, if he understood what the actual hazard</p> <p>24 was.</p>	<p style="text-align: right;">69</p> <p>1 Nothing is coming to mind.</p> <p>2 If you'd like, I can go through the list.</p> <p>3 Q. Okay.</p> <p>4 A. I don't remember all the cases. I'm only on</p> <p>5 Page 3, but on Page 3, in October of 2014, I don't</p> <p>6 recall if I was retained by the leasing company, or</p> <p>7 the manufacturer. That had to do with the alarm, a</p> <p>8 warning on a skid loader.</p> <p>9 Q. I'm sorry. You're on Page 3?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What case? What's the name?</p> <p>12 A. Rual Nunez versus Martin Leasing, et al.</p> <p>13 Q. Okay. And, what type of product was at</p> <p>14 issue in that case, if you recall?</p> <p>15 A. A skid loader.</p> <p>16 Q. What's a skid loader?</p> <p>17 A. It's kind of like a forklift. Typically, it</p> <p>18 has tracks, as opposed to wheels.</p> <p>19 Q. Okay. And, do you recall --</p> <p>20 A. It's also called a Bobcat. Sometimes it's</p> <p>21 called a Bobcat.</p> <p>22 Q. That sounds more familiar to me. Okay.</p> <p>23 And, you were retained by one of the</p> <p>24 defendants in that case?</p>

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<p style="text-align: right;">70</p> <p>1 A. Yes.</p> <p>2 Q. And, was the manufacturer a defendant</p> <p>3 because it just says "et al" after Martin Leasing?</p> <p>4 A. Yes. I don't recall if it was just the</p> <p>5 leasing company, or if it was the leasing company</p> <p>6 and manufacturer. I just don't recall.</p> <p>7 Q. Okay. And, do you recall what your opinion</p> <p>8 was in that case, even generally?</p> <p>9 A. It had to do with the audible warnings on</p> <p>10 the skid loader.</p> <p>11 Q. And, was it your opinion that audible</p> <p>12 warnings were adequate, if you remember?</p> <p>13 A. I don't remember. I don't remember what my</p> <p>14 opinions were in that case.</p> <p>15 Q. But, you remember it was an audible warning</p> <p>16 that was at issue?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Was it that the plaintiff didn't hear</p> <p>19 the warning?</p> <p>20 A. Yes. The plaintiff was struck by the back</p> <p>21 of a skid loader -- I'm sorry -- he was hit by the</p> <p>22 back of a skid loader. It was a residential street,</p> <p>23 and they were doing some work, leaf cleanup work, I</p> <p>24 believe. A truck had stopped -- a civilian truck</p>	<p style="text-align: right;">72</p> <p>1 driver.</p> <p>2 Q. Okay. What cases were those?</p> <p>3 A. Air Carter versus United States of America</p> <p>4 in August of 2014.</p> <p>5 Q. And, what page is that on?</p> <p>6 A. Page 3, the top of Page 3.</p> <p>7 Q. Okay.</p> <p>8 A. And then I saw one on Page 2. I believe</p> <p>9 it's January, 2004, Chalie Mae Wade versus James C.</p> <p>10 Townley, et al.</p> <p>11 Q. And, what were your opinions, if you recall,</p> <p>12 in either of those cases?</p> <p>13 A. That the defendant vehicle provided</p> <p>14 sufficient and adequate warning to alert a</p> <p>15 reasonably attentive driver to the presence of the</p> <p>16 defendant vehicle. And, I take that back. I don't</p> <p>17 think Townley was the -- I don't think that was</p> <p>18 the -- I don't remember what Townley was. I take</p> <p>19 that back.</p> <p>20 Q. So, just the Carter case?</p> <p>21 A. Yes. And, then there is one on Page 4 where</p> <p>22 it's a defendant driver, but I don't think that was</p> <p>23 really a warnings case. It was more a visibility</p> <p>24 case.</p>
<p style="text-align: right;">71</p> <p>1 had stopped. One of the ground hands went over to</p> <p>2 talk to the truck that had stopped, the pickup truck</p> <p>3 that had stopped, and the skid loader reversed, and</p> <p>4 struck the ground hand.</p> <p>5 And, I can't remember if he was at the</p> <p>6 truck, or if he was near the truck. I don't</p> <p>7 remember.</p> <p>8 Q. Any other cases, in addition to the Nunez</p> <p>9 case?</p> <p>10 A. I don't see any other ones on the list, that</p> <p>11 were on behalf of the defense manufacturer.</p> <p>12 There's a couple that involved -- I was</p> <p>13 retained on behalf of defense to determine whether</p> <p>14 the plaintiff had adequate warning, but they were</p> <p>15 not for a manufacturer.</p> <p>16 One of them was for a vehicle, and two of</p> <p>17 them were vehicle cases.</p> <p>18 Q. So, in the vehicle cases, you were retained</p> <p>19 by the defendant in the case?</p> <p>20 A. Yes.</p> <p>21 Q. And, you were evaluating warnings in the</p> <p>22 vehicle?</p> <p>23 A. Warning to the approaching plaintiff driver</p> <p>24 as to the presence and state of the defendant</p>	<p style="text-align: right;">73</p> <p>1 Q. So in the Carter case, I understand</p> <p>2 generally what was at issue, but can you be more</p> <p>3 specific?</p> <p>4 What was it about the vehicle, that provided</p> <p>5 an adequate warning to the oncoming driver?</p> <p>6 A. The collision happened in a work zone on a</p> <p>7 multilane freeway down in the Norfolk area, I think,</p> <p>8 Norfolk, Virginia.</p> <p>9 It was early in the morning before sunup.</p> <p>10 The defendant was an employee of the United States</p> <p>11 Government. He was a military employee driving a</p> <p>12 U.S. Government car. And, it happened at an</p> <p>13 interchange. And, the defendant driver had meant to</p> <p>14 get off of an interchange to go to the airport, and</p> <p>15 the construction crews had closed the interchange</p> <p>16 for whatever work they were doing. And, he stopped</p> <p>17 on the travel lane, through travel lane, the right</p> <p>18 travel lane adjacent to the closed off ramp next to</p> <p>19 the construction truck, that was doing work there.</p> <p>20 And, he stopped to ask him about how to reroute</p> <p>21 himself to get rerouted to the airport, I think.</p> <p>22 And he was stopped there for a minute, or so.</p> <p>23 The plaintiff came up from behind, and</p> <p>24 without responding, hit the back of the car, and</p>

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<p style="text-align: right;">74</p> <p>1 killed himself.</p> <p>2 So it was a question as to whether or not</p> <p>3 there was enough visibility, whether or not there</p> <p>4 was enough warnings.</p> <p>5 The driver did have his brakes on, and his</p> <p>6 four-ways, on at the time. The construction truck,</p> <p>7 that was next to him, had his flashing lights on,</p> <p>8 and his beacons on.</p> <p>9 And, so, there's a question as to whether or</p> <p>10 there was enough information and warning for the</p> <p>11 plaintiff driver to have -- a reasonably attentive</p> <p>12 approaching driver to see, and avoid, the stopped</p> <p>13 car.</p> <p>14 Q. All right. Let's turn our attention to the</p> <p>15 Cloud case.</p> <p>16 Do you recall when you were retained in this</p> <p>17 matter, even generally, just like a ballpark?</p> <p>18 A. Yes. From a Vigilante Forensic standpoint,</p> <p>19 I was retained on, I believe, October 1st of last</p> <p>20 year.</p> <p>21 Q. So, October 1st of 2015, were you initially</p> <p>22 retained while you were still at Robson?</p> <p>23 A. Yes, on April 22nd, 2015.</p> <p>24 Q. April 22nd?</p>	<p style="text-align: right;">76</p> <p>1 have a -- I have letter from Mr. Hughes.</p> <p>2 MR. LEVINE: Patrick Hughes?</p> <p>3 THE WITNESS: Yes. So, it looks</p> <p>4 like he did send me documents both in July</p> <p>5 and August of 2015. But, at least from the</p> <p>6 document he sent me of August, 2015, I</p> <p>7 didn't review that until November 2nd of</p> <p>8 2015.</p> <p>9 So, there was possibly an invoice</p> <p>10 from Robson.</p> <p>11 MS. YEMMA: Okay. And, I can</p> <p>12 followup with Pat about that. He should</p> <p>13 have a copy, if you don't.</p> <p>14 THE WITNESS: Yes, I don't.</p> <p>15 MR. LEVINE: I will look while I'm</p> <p>16 sitting here.</p> <p>17 MS. YEMMA: Okay, thanks.</p> <p>18 BY MS. YEMMA:</p> <p>19 Q. What were you retained to do in this matter?</p> <p>20 A. Well, I was retained to assess the warnings</p> <p>21 and instructions provided by Electrolux, and look at</p> <p>22 the foreseeability, and actions, of the homeowners.</p> <p>23 That's kind of a general way to put it.</p> <p>24 Q. And the material that you were provided in</p>
<p style="text-align: right;">75</p> <p>1 A. Yes.</p> <p>2 Q. And, I meant to ask you this earlier: You</p> <p>3 identified that there were three invoices on the CD.</p> <p>4 A. Yes.</p> <p>5 Q. And, are those all the invoices that either</p> <p>6 your company, or Robson, had generated for this</p> <p>7 matter?</p> <p>8 A. They're all the invoices that I've generated</p> <p>9 through Vigilante Forensic. I don't know if Robson</p> <p>10 Forensic had generated any invoices.</p> <p>11 Q. Do you have access to those invoices?</p> <p>12 A. I do not. But I don't think that they would</p> <p>13 have, given the scope of work that's on the first</p> <p>14 invoice I generated. And, I don't have a memory of</p> <p>15 doing any work prior to November of last year on the</p> <p>16 case. So, I'm going to -- if I had to provide a</p> <p>17 guess, I would think that Robson did not send any</p> <p>18 invoices.</p> <p>19 Q. And you were retained in April 2015, but you</p> <p>20 don't believe that you did any work on the Cloud</p> <p>21 matter until November of 2015?</p> <p>22 A. I believe so. That's my best memory.</p> <p>23 Q. Okay.</p> <p>24 A. But, you know what, I can take that back. I</p>	<p style="text-align: right;">77</p> <p>1 this case, they're all contained on either the CD,</p> <p>2 or in the notebook, is that correct, and also what's</p> <p>3 in your report?</p> <p>4 A. Yes.</p> <p>5 Q. And, does your report contain all of the</p> <p>6 opinions that you have in this matter, all the</p> <p>7 affirmative opinions that you intend to offer at</p> <p>8 trial?</p> <p>9 A. What do you mean by "affirmative"?</p> <p>10 Q. Well, as opposed to, like, a rebuttal</p> <p>11 opinion?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And, at least as we sit here today,</p> <p>14 you don't have any plans to issue a supplemental, or</p> <p>15 rebuttal, report; is that correct?</p> <p>16 A. I haven't been asked to at this point.</p> <p>17 MS. YEMMA: Okay. These are the</p> <p>18 notes, what I believe to be the notes from</p> <p>19 your conversation with Mike Stoddard. And,</p> <p>20 we will mark that as Vigilante-7.</p> <p>21 (Notes from Dr. Vigilante's</p> <p>22 telephone conversation with Mike Stoddard</p> <p>23 marked Vigilante Exhibit No. 7 for</p> <p>24 identification.)</p>

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<p style="text-align: right;">78</p> <p>1 BY MS. YEMMA:</p> <p>2 Q. And, I have just handed you that two-page</p> <p>3 document. And, if you would, Dr. Vigilante, just</p> <p>4 identify that for the record.</p> <p>5 A. These are the notes that I made during my</p> <p>6 telephone conference with Mike Stoddard on January</p> <p>7 14th, 2015.</p> <p>8 Q. And, did you have one telephone conversation</p> <p>9 with him, with Mr. Stoddard?</p> <p>10 A. Regarding this case?</p> <p>11 Q. Yes -- I'm sorry, I should be more</p> <p>12 specific -- regarding this case.</p> <p>13 A. I believe so.</p> <p>14 Q. And, that was on January 14th, 2015?</p> <p>15 A. Yes. Now, I've got to take that back. I</p> <p>16 may have talked to Mr. Stoddard about this case on</p> <p>17 other occasions, either prior, or after, the 14th of</p> <p>18 January, 2015. And, that's a typo. That should be</p> <p>19 January 14th, 2016.</p> <p>20 Q. Okay.</p> <p>21 A. But I don't recall if I did, or did not, so</p> <p>22 it's possible. I don't want to rule it out.</p> <p>23 Q. And the document, that's been marked as</p> <p>24 Vigilante-7, is that a document that you created?</p>	<p style="text-align: right;">80</p> <p>1 and then what kind of analysis they're doing, and</p> <p>2 what their findings, and conclusions, are based upon</p> <p>3 their analysis.</p> <p>4 I typically do that if my report's due at or</p> <p>5 about the same time that the subject matter expert's</p> <p>6 report is dated.</p> <p>7 So I think Mike Stoddard's, and my report,</p> <p>8 were both generated on the 20th of January. So I</p> <p>9 would have wanted to know what he was going to be</p> <p>10 saying prior to getting his report.</p> <p>11 Q. So, did you have an opportunity to review</p> <p>12 Mr. Stoddard's report before you finalized yours?</p> <p>13 A. Yes.</p> <p>14 Q. Are you relying on any of Mr. Stoddard's</p> <p>15 opinions in this matter?</p> <p>16 A. Sure.</p> <p>17 Q. What opinions of Mr. Stoddard's are you</p> <p>18 relying upon?</p> <p>19 A. Specifically that it was reasonable and</p> <p>20 feasible to include the indicator lights, and cycle</p> <p>21 timers, as discussed on Page 24 of my report.</p> <p>22 And, also, with respect to the ignition and</p> <p>23 cause of the fire -- the origination and cause of</p> <p>24 the fire, as noted on Page 6 of my report.</p>
<p style="text-align: right;">79</p> <p>1 A. Yes.</p> <p>2 Q. And, you created that contemporaneous with</p> <p>3 your conversation with Mr. Stoddard, or at a</p> <p>4 different time?</p> <p>5 A. No. I was taking notes, writing notes,</p> <p>6 while I spoke with Mike Stoddard.</p> <p>7 Q. And, did you take the written notes, and</p> <p>8 type them up?</p> <p>9 A. I was typing them up as I spoke with him.</p> <p>10 Q. Okay.</p> <p>11 A. I may have went back after I got off the</p> <p>12 phone with him, and fixed the grammar. Sometimes, I</p> <p>13 misspell when I type.</p> <p>14 Q. Yes, I do, too. So, you said you had other</p> <p>15 conversations with Mr. Stoddard regarding the Cloud</p> <p>16 case. Did you take any notes?</p> <p>17 A. I did not.</p> <p>18 Q. What was the purpose of the call with Mike</p> <p>19 Stoddard on January 14th, 2016?</p> <p>20 A. Typically, I talked to Mr. Stoddard when --</p> <p>21 typically, I talk to the engineer, or subject matter</p> <p>22 expert, in these cases to get an idea of what</p> <p>23 happened, what their findings were during their</p> <p>24 inspection of either the site and/or the product,</p>	<p style="text-align: right;">81</p> <p>1 Q. Do you have an opinion with regard to the</p> <p>2 design of the dryer?</p> <p>3 A. Other than with respect to the indicator</p> <p>4 lights, and the cycle counter, airflow monitor</p> <p>5 device, I do not.</p> <p>6 Q. And I realize some consider the warnings</p> <p>7 part of the design, but did you understand I</p> <p>8 excluded that?</p> <p>9 A. I thought you were excluding it.</p> <p>10 Q. Okay. I just wanted to make sure, and give</p> <p>11 you the benefit of that, that I was excluding it.</p> <p>12 Okay.</p> <p>13 And, I remember this came up in the Vitale</p> <p>14 deposition: In connection with the Cloud matter,</p> <p>15 have you done any surveys of appliance stores, or</p> <p>16 vent cleaning companies, in the Cloud matter since</p> <p>17 April of 2016?</p> <p>18 A. I don't think I have done any specifically</p> <p>19 for the Cloud matter.</p> <p>20 Q. Have you done anything in general since I</p> <p>21 deposed you in Vitale?</p> <p>22 A. I had my dryer and vent system cleaned since</p> <p>23 then, I believe.</p> <p>24 Q. Okay. When was that? When did you have</p>

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<p style="text-align: right;">82</p> <p>1 that done?</p> <p>2 A. It was springtime, and it was, I believe,</p> <p>3 after the Vitale deposition.</p> <p>4 Q. So, maybe May or June -- May, in the spring?</p> <p>5 A. May or June.</p> <p>6 Q. Okay, May or June. And, what type of dryer</p> <p>7 do you have?</p> <p>8 A. I have a Kenmore H4, maybe.</p> <p>9 Q. H?</p> <p>10 A. H4.</p> <p>11 Q. H4, okay. Like, high efficiency?</p> <p>12 A. I don't know. The dryer is about 10 years</p> <p>13 old.</p> <p>14 Q. Okay.</p> <p>15 A. It's a bulkhead style dryer, gas dryer.</p> <p>16 Q. How do you know it's a bulkhead style dryer?</p> <p>17 A. One of the engineers I worked with in these</p> <p>18 cases walked me through looking at it, to see</p> <p>19 whether it was a bulkhead, or a ball-hitch. And,</p> <p>20 then I think they confirmed it by looking up the</p> <p>21 model number, and year.</p> <p>22 Q. Were you interested to know whether you had</p> <p>23 a bulkhead, or a ball-hitch dryer?</p> <p>24 A. Absolutely.</p>	<p style="text-align: right;">84</p> <p>1 anything else?</p> <p>2 A. They did clean the venting, and similar to</p> <p>3 the calls I made, I think it was prior to the Vitale</p> <p>4 deposition, didn't want to, or know that he needed</p> <p>5 to clean the interior of the dryer. But, he was</p> <p>6 nice enough to take the front panel off, and vacuum</p> <p>7 under the dryer, and down through the lint trap. He</p> <p>8 was not able to get behind the drum -- or he may</p> <p>9 have taken the top of the dryer off, but he didn't</p> <p>10 take the drum out.</p> <p>11 Q. Were you present while he was cleaning?</p> <p>12 A. Partly. I mean, I was home, but I wasn't</p> <p>13 standing over him the entire time.</p> <p>14 Q. Okay. Were you present when he was</p> <p>15 disassembling the dryer?</p> <p>16 A. Part of it, yes.</p> <p>17 Q. Okay. And, it's your understanding that he</p> <p>18 removed the front and the top panel?</p> <p>19 A. I seen him take the front off. I have a</p> <p>20 memory of that. I think he took the top off because</p> <p>21 I think we discussed it, but I don't have a memory</p> <p>22 of actually being there with the top off.</p> <p>23 Q. So when you moved into you current home with</p> <p>24 the dryer you had purchased at a Sears Outlet, who</p>
<p style="text-align: right;">83</p> <p>1 Q. How long have you been in your current home?</p> <p>2 A. A little over six years.</p> <p>3 Q. So, did you acquire the dryer from the prior</p> <p>4 owners?</p> <p>5 A. No. We had purchased the dryer in our past</p> <p>6 house.</p> <p>7 Q. Okay. And, where did you purchase the dryer</p> <p>8 from, from Sears?</p> <p>9 A. Sears Outlet in Franklin Mills, I think.</p> <p>10 Q. I'm familiar with that.</p> <p>11 MS. YEMMA: And, if I could just</p> <p>12 finish this line of questioning, and then we</p> <p>13 can take a break for lunch. Is that okay?</p> <p>14 MR. LEVINE: Yes, sure.</p> <p>15 THE WITNESS: The dryer vent</p> <p>16 cleaning, and dryer cleaning, was done in</p> <p>17 May.</p> <p>18 BY MS. YEMMA:</p> <p>19 Q. Okay. And, do you know the company that you</p> <p>20 used?</p> <p>21 A. Lint Doctor from Glen Falls, PA. (Sic)</p> <p>22 Q. Lint Doctor, okay.</p> <p>23 And, did they clean the venting? They</p> <p>24 cleaned the venting, and then did they clean</p>	<p style="text-align: right;">85</p> <p>1 installed it at your current home?</p> <p>2 A. Probably, the movers.</p> <p>3 Q. And, how is your dryer vented currently?</p> <p>4 A. Well, the transition vent is a semirigid.</p> <p>5 Q. Okay.</p> <p>6 A. The house vent is rigid. And, the house</p> <p>7 vent goes from the side wall, right side wall of the</p> <p>8 dryer, and there's like a 10-foot run directly</p> <p>9 outside. There may be about two elbows in the wall</p> <p>10 to bring it down a little lower. I don't know.</p> <p>11 Q. So when the gentleman from Lint Doctor came,</p> <p>12 did he clean the entire length of the venting,</p> <p>13 including the semirigid and rigid portion?</p> <p>14 A. Yes. I had him take the transition duct</p> <p>15 off, which he typically didn't do. But I asked him,</p> <p>16 and told him why, and he did it.</p> <p>17 Q. Did he tell you it was not his usual</p> <p>18 practice to clean the transition duct?</p> <p>19 A. Yes -- well, I take that back. He didn't</p> <p>20 say it was his usual practice not to. He said the</p> <p>21 way he would clean it is he would go from the</p> <p>22 outside with his brush, and go all the way through</p> <p>23 into the dryer. But, I highly doubt that he's able</p> <p>24 to get into the dryer from outside on all of his</p>

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<p style="text-align: right;">86</p> <p>1 dryers. So, he doesn't normally take the transition 2 duct off. 3 Q. What was he using to clean the venting, if 4 you know? 5 A. He had a brush, and a drill, and some type 6 of snake, I guess would be the best way to call it. 7 Q. Was the brush motorized in any way? 8 A. Yes. It was attached to the snake, and 9 attached to the drill. 10 Q. Was this the first time you had ever had 11 your venting cleaned? 12 A. I get it done, like, every year, year and a 13 half. 14 Q. How long have you done that? 15 A. Since I started doing these Electrolux 16 cases. 17 Q. So, when did you start doing the Electrolux 18 cases? Was that 2015, or before that? 19 A. No, I've been doing it before that. At 20 least the last -- more than six years. 21 Q. What was the first Electrolux case you had, 22 do you remember? 23 A. I don't recall. I think it was Matt Noone. 24 Q. Was it the Marquette case?</p>	<p style="text-align: right;">88</p> <p>1 A. I don't recall offhand. There was another 2 like "Lint Doctor"; it may have been Mr. Lint, or 3 Mr. Dryer. I remember using him twice. 4 Typically, when they come out, they don't 5 like to come back because I make them do things that 6 they typically don't do. 7 Q. And, what would be an example of that? 8 A. Typically, I ask them to take the transition 9 duct off, and they're hesitant to do that. 10 And, I ask them to clean inside the dryer. 11 Typically, they don't want to. 12 I think the year and a half before I had 13 this one done, I had to call a guy out to do the 14 vent, and then another guy out -- I had to call 15 Kenmore. And, then Kenmore wouldn't do it, and I 16 had to call Sears. And, Sears sent a guy that would 17 come out, and he opened the dryer, but he wouldn't 18 do the vent. So I to call two guys. It cost me 19 nearly \$300 to do both. 20 Q. How about this year with Lint Doctor, how 21 much did that cost? 22 A. I had that up, and I brought it down -- 23 \$100. 24 Q. On any of the times you've had your venting</p>
<p style="text-align: right;">87</p> <p>1 A. It was before Marquette. 2 Q. Okay. I'm familiar with Marquette because I 3 had that case. That's why I was asking. That had 4 to be, like, 2012, or '13, I think. 5 You don't have to look, it's okay. 6 A. I did Power, and -- 7 Q. Okay. That would have probably been before 8 Marquette. 9 A. There was another one in between Power and 10 Marquette, too. 11 Q. Okay. And, so, for the last, you did you 12 say, six years, you've been getting your venting 13 cleaned? 14 A. More than that. 15 Q. Oh, more than that? 16 A. Yes. But, I have been in this house six 17 years. 18 Q. Okay. So, have you always used the Lint 19 Doctor to do the cleaning? 20 A. No. 21 Q. Was this your first time using Lint Doctor? 22 A. Yes. 23 Q. What other companies have you used, if you 24 know?</p>	<p style="text-align: right;">89</p> <p>1 and cabinet cleaned, did you happen to see whether 2 there was lint inside the cabinet, or the venting, 3 before the cleaning? 4 A. Yes. I know there's lint buildup in the 5 cabinet, in the vent. 6 Q. And, were there any blockages? 7 A. Not that I'm aware of. 8 Q. Was there a lot of lint in the cabinet, or 9 the venting? 10 A. A lot is relative. I'm going to say that 11 there's not -- there's not, like, a two or 12 three-inch layer of lint under the drum, or anything 13 like that. 14 Q. So, less than two to three inches on the 15 bottom of the cabinet? 16 A. Yes. I would say less than an inch. 17 Q. And, how many people live in your household? 18 A. There's three of us. 19 Q. How about in the venting, can you describe 20 the lint that you saw? Can you quantify it? 21 A. Yes. It didn't appear that there was that 22 much. 23 MS. YEMMA: All right. This is a 24 good stopping point. We can take a break to</p>

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<p style="text-align: right;">90</p> <p>1 eat.</p> <p>2 (Lunch recess from 12:30 to 1:00</p> <p>3 p.m.)</p> <p>4 BY MS. YEMMA:</p> <p>5 Q. Dr. Vigilante, did you speak with the Clouds</p> <p>6 at anytime in connection with this matter?</p> <p>7 A. I don't believe I did.</p> <p>8 Q. Any reason why not?</p> <p>9 A. Typically, I don't speak with the homeowners</p> <p>10 if everything I needed, and would like to have seen,</p> <p>11 was discussed in the deposition transcript.</p> <p>12 Q. Okay. And, was everything you discussed in</p> <p>13 their deposition transcript, as far as you're --</p> <p>14 A. As far as I'm aware of, yes.</p> <p>15 Q. As far as you're aware of. Okay.</p> <p>16 Do you have an opinion as to whether the</p> <p>17 subject dryer was installed in accord with</p> <p>18 Electrolux's instructions?</p> <p>19 A. Are we talking specifically about the</p> <p>20 venting, or is there issue with electrical, or</p> <p>21 anything like that?</p> <p>22 Q. No. I'm talking specifically with regard to</p> <p>23 the venting.</p> <p>24 A. The venting they used for the transition</p>	<p style="text-align: right;">92</p> <p>1 Electrolux in discovery -- and I'll identify the</p> <p>2 Bates number is EHP-Cloud 0011 through</p> <p>3 EHP-Cloud 00019.</p> <p>4 Do you have any reason to doubt that those</p> <p>5 are the installation instructions for the Clouds'</p> <p>6 dryer?</p> <p>7 A. I have no information either way, other than</p> <p>8 what Electrolux is offering.</p> <p>9 Q. Were you assuming that's correct for your</p> <p>10 analysis in this matter?</p> <p>11 A. I assume that was the manual that would</p> <p>12 accompany the dryer, but I have no evidence either</p> <p>13 way.</p> <p>14 Q. Was there anything else about the</p> <p>15 installation, apart from the use of flexible foil,</p> <p>16 that was not in accord with the installation</p> <p>17 instructions?</p> <p>18 A. I think the only question I had was</p> <p>19 the exhaust hood was a low profile exhaust hood.</p> <p>20 But I think what Mike Stoddard told me, it still met</p> <p>21 the area requirements. I think that's my memory.</p> <p>22 So, I don't know if that may have been a</p> <p>23 question as to whether or not it meant Electrolux</p> <p>24 requirement, as stated in the subject installation</p>
<p style="text-align: right;">91</p> <p>1 duct was flexible foil, and I wanted to see which --</p> <p>2 Q. Do you need a copy of the installation</p> <p>3 instructions?</p> <p>4 A. No. I've got it, as long as the one that</p> <p>5 was attached to Mrs. Cloud's deposition is the</p> <p>6 correct one.</p> <p>7 Q. That's the correct one.</p> <p>8 A. The use of the flexible foil transition duct</p> <p>9 is contrary to the installation instructions noted</p> <p>10 in the subject installation instructions.</p> <p>11 And the reason I'm being careful with the</p> <p>12 explanation is that in other Electrolux manuals,</p> <p>13 they do allow flexible foil transition ducts. But</p> <p>14 in this particular Frigidaire install manual, I do</p> <p>15 not see that language.</p> <p>16 Q. Okay. So for the installation instructions</p> <p>17 that apply to the Clouds' dryer, flexible foil is</p> <p>18 not permitted; is that correct?</p> <p>19 A. The installation instructions that</p> <p>20 Electrolux claims was shipped with this dryer does</p> <p>21 not allow -- does not -- prohibits flexible foil</p> <p>22 transition ducting.</p> <p>23 Q. Do you have any reason to doubt that the</p> <p>24 installation instructions, that were produced by</p>	<p style="text-align: right;">93</p> <p>1 instructions.</p> <p>2 Q. Did Mr. Stoddard tell you how many inches</p> <p>3 the hood was from the ground?</p> <p>4 A. I do not have that noted.</p> <p>5 Q. Have you seen photographs, and do you have</p> <p>6 an understanding of how many inches the hood was</p> <p>7 from the ground?</p> <p>8 A. I don't think that was something I looked at</p> <p>9 specifically.</p> <p>10 Q. Okay. But, you just understand it's the low</p> <p>11 profile vent hood?</p> <p>12 A. It's my understanding it was a metal low</p> <p>13 profile opening hood with damper, pipe and damper</p> <p>14 still four inches in diameter.</p> <p>15 Q. Do you know what the installation</p> <p>16 instructions call for with regard to the clearance</p> <p>17 between the vent hood, and the ground?</p> <p>18 A. I have to look it up. I don't know offhand.</p> <p>19 Q. Okay.</p> <p>20 A. It looks like there's a minimum. Electrolux</p> <p>21 states in the manual, to avoid restricting the</p> <p>22 outlet, maintain a minimum of 12 inches clearance</p> <p>23 between the vent hood, and the ground, or any other</p> <p>24 obstructions.</p>

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<p style="text-align: right;">94</p> <p>1 Q. And, do you know whether the vent hood was 2 at least 12 inches from the ground? 3 A. Not offhand. 4 Q. Okay. Do you have an opinion as to whether 5 the dryer, and the venting, were maintained as 6 required by Electrolux's instructions? 7 A. I think I do mention that in my report. 8 Mr. Cloud testified that he cleaned the venting once 9 a year. So, that would be within the Electrolux 10 requirements for cleaning the venting. 11 Q. Do you have an understanding of how 12 Mr. Cloud cleaned the venting? 13 A. I'm going to have to look that up. 14 Q. Actually, I am going to ask a different 15 question: Do you know whether Mr. Cloud cleaned the 16 transition venting? 17 A. I have to look it up, to see specifically 18 what he testified to. 19 Q. Okay. 20 A. He testified he never cleaned the transition 21 duct depicted in C-3. He testified that he did 22 clean the house duct, as depicted in Exhibit C-4. 23 Q. Do you know if the Clouds ever had an 24 authorized servicer clean the venting?</p>	<p style="text-align: right;">96</p> <p>1 A. That's my understanding. 2 Q. Okay. Did you review the language on that 3 label? 4 A. Yes. 5 Q. Do you have any opinion as to whether that 6 label complies with ANSI Z21.5.1? 7 A. It does not -- I'm sorry, 5.1, Z535. -- 8 Q. Z21.5.1, the gas dryer standard? 9 A. It's my understanding it does. 10 Q. It does comply? 11 A. That's my understanding. 12 Q. Okay. How about the warning standard, 13 Z535.4? 14 A. It does not. 15 Q. Okay. And, why doesn't it comply with that 16 standard? 17 A. Multiple reasons: There's no use of color 18 as the ANSI Z535.4 would require. 19 It also does not specifically list a 20 specific hazard, and how to avoid it, on the warning 21 label. 22 Q. When you say "it doesn't list the hazard", 23 it does talk about a risk of fire. Would you agree 24 with that?</p>
<p style="text-align: right;">95</p> <p>1 A. I don't believe they ever had an authorized 2 servicer. 3 Q. And, do you know whether Mr. and Mrs. Cloud 4 ever cleaned the dryer cabinet? 5 A. The inside of it? 6 Q. The inside of it. 7 A. They had not cleaned the interior of the 8 dryer cabinet. 9 Q. And, had they hired anyone to clean the 10 interior of the dryer cabinet? 11 A. Not that I'm aware of. 12 Q. Okay. So with regard to the labels, that 13 were on the dryer, we talked earlier about the long 14 skinny label that's inside the door frame. 15 A. Yes. 16 MS. YEMMA: And, I'm going to mark 17 that as Vigilante-8. 18 (Skinny label inside door from 19 marked Vigilante Exhibit No. 8 for 20 identification.) 21 BY MS. YEMMA: 22 Q. And, Dr. Vigilante, do recognize that label, 23 that's been marked as Vigilante-8, as the long, 24 skinny label that's inside the door frame?</p>	<p style="text-align: right;">97</p> <p>1 A. Generally, yes. 2 Q. And, it talks about risk of injury with 3 regard to the use of the dryer, too, right, risk of 4 fire and injury? 5 A. It does say to avoid fire hazard, personal 6 injury, or fire damage, including spontaneous 7 combustion. 8 Q. Okay. And when you said a moment ago that 9 it doesn't identify the hazard, what are you 10 referring to specifically? 11 A. The hazard is the lint buildup near the heat 12 source that can potentially catch fire. 13 Q. You would agree, though, that isn't the only 14 hazard that is associated with the use of the dryer? 15 A. It's not. It's the greatest hazard. 16 Q. Okay. Why do you believe it's the greatest 17 hazard? 18 A. Because that's what Carl King testified to. 19 Q. Okay. Carl King has also testified that 20 personal injury, like electrocution, is one of the 21 greatest hazards, too. Do you remember that 22 testimony? 23 A. Carl King testified that the fire hazard 24 associated with lint buildup in the dryer, and a</p>

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<p style="text-align: right;">98</p> <p>1 lint dryer fire, was the greatest hazard that is 2 experienced with this type of dryer. 3 He was your corporate designee, which means 4 he is speaking on behalf of Electrolux. 5 Q. I understand that. 6 A. So, it's the greatest hazard. 7 There may be other be serious hazards. But 8 the greatest hazard, according to Carl King, is a 9 lint dryer fire hazard. 10 Q. Would you agree that the warnings that are 11 on the label inside the door frame have to do with 12 day-to-day operation of the dryer as opposed to 13 maintenance? 14 A. Yes. I think that if you're talking about, 15 like, a scheduled maintenance, it doesn't deal with 16 scheduled maintenance. 17 If you're talking about regular maintenance, 18 it does deal with regular maintenance. 19 Q. When you say "regular maintenance", what do 20 you mean? 21 A. Well, cleaning the lint screen is part of 22 regular maintenance. 23 Q. But, that would also have to do with 24 day-to-day operation. Right?</p>	<p style="text-align: right;">100</p> <p>1 A. Well, I don't have an opinion with respect 2 to the other stuff on here with regard to 3 spontaneous combustion -- 4 Q. Okay. 5 A. -- and drying rubber-like products. So, 6 that isn't part of my analysis, or opinions. My 7 analysis and opinion deal specifically with the lint 8 fire hazard. 9 Q. And, I understand that, and we're going to 10 get to that. I just want to understand with regard 11 to the warning that was on the dryer, that we've 12 marked has Vigilante-8, you did say that you find 13 that it was in violation of Z535.4. Is that 14 correct? 15 A. Yes. 16 Q. Okay. Is that only in terms of -- I think I 17 wrote down that no use of color on the label? 18 A. Failed to meet the ANSI requirements for 19 color highlighting of the signal or panel. 20 Q. You said that much more coherently than I 21 did. 22 So, apart from that criticism, is there any 23 other criticism with regard to that label when you 24 compare it to the standard?</p>
<p style="text-align: right;">99</p> <p>1 A. Sure. 2 Q. Okay. The venting, and the cabinet, don't 3 need to be cleaned on a daily basis. Right? 4 A. Not that I'm aware of. 5 Q. Okay. So, isn't it reasonable to put 6 information, that the user doesn't need to be aware 7 of on a daily basis, in the manual as opposed to on 8 the product? 9 A. It depends on the information. 10 Q. Okay. 11 A. I have to clarify one thing. It also fails 12 to meet the Z535.4 standard, and the fact that it 13 wasn't located when, and where, the information was 14 needed, and was not readily visible. 15 Q. Okay. And, I was going to actually come 16 back to that. So, I appreciate that. 17 So, can you expand on that more? 18 A. Sure. 19 Q. In terms of the location, where should it 20 have been, in your opinion? 21 A. Well, at that point, or the warning they 22 should have provided? 23 Q. Well, let's just stick with this right now, 24 and then we will get into your proposed warnings.</p>	<p style="text-align: right;">101</p> <p>1 A. Yes. 2 Q. What are they? 3 A. It does not provide a specific hazard 4 associated with the dryer lint fire hazard. So if 5 this label is not intended to address that hazard, 6 then, of course, that wouldn't be a criticism. But 7 my understanding is, is that it's part of 8 Electrolux's argument that it does address that 9 hazard, or intended to address the hazard. 10 So, also, it does not provide explicit 11 information as to the hazard, and how to avoid it, 12 again related to the lint dryer hazard. 13 It's not located where, and when, the 14 information is needed, or where it would be readily 15 visible. 16 So, my understanding is they put this on the 17 inside door frame of the dryer, and that depending 18 upon how the dryer user had the door installed, it's 19 either going to be on the hinge side, or it's going 20 to be on the latch side. 21 If it's on the latch side, it's going to be 22 more readily visible than on the hinge side. But in 23 either case, about 95 percent of the life, 90 to 95 24 percent of the life of the dryer, it's going to be</p>

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<p>1 hidden by the closed door.</p> <p>2 Q. The Clouds' dryer, where was this label</p> <p>3 located -- and when I say "this", Vigilante-8 --</p> <p>4 label located in relation to the door hinge, do you</p> <p>5 know?</p> <p>6 A. It's my understanding it was on the hinge</p> <p>7 side.</p> <p>8 Q. And, it's your understanding the label is</p> <p>9 located on the hinge side unless the consumer, or</p> <p>10 user, reverses the door?</p> <p>11 A. Well, yes. If they reverse the door to the</p> <p>12 other side, it would be on the latch side.</p> <p>13 Q. In other words, it comes from the</p> <p>14 manufacturer on the hinge side?</p> <p>15 A. It comes on one side. I don't know if it's</p> <p>16 always on the hinge side when it's manufactured.</p> <p>17 But, typically, Electrolux makes the doors</p> <p>18 reversible.</p> <p>19 Yes, so on Page 6 of the Installation</p> <p>20 Instructions, Electrolux notes that the door has a</p> <p>21 reversing door swing. And, I think it comes from</p> <p>22 the factory with the door on the right side looking</p> <p>23 at the front. At least, that's the way it's</p> <p>24 depicted in the manual.</p>	<p>1 Q. The Maytag?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. And, Whirlpool is a refrigerator. So, I</p> <p>5 think it was just the Fisher & Pakel dryer manual is</p> <p>6 the only one that I disclosed.</p> <p>7 But, I disclosed that to deal with the</p> <p>8 indicator light, not necessarily how they're</p> <p>9 presenting other written warnings.</p> <p>10 Q. The Fisher & Pakel dryer, do you know what</p> <p>11 year that dryer was manufactured, that's associated</p> <p>12 with the manual that you have?</p> <p>13 A. It was published in November, 2005.</p> <p>14 Q. And, that dryer had an indicator light, as</p> <p>15 far as you know?</p> <p>16 A. It has a lid lock indicator light that comes</p> <p>17 on solid, or flashing, to indicate the state of the</p> <p>18 lid.</p> <p>19 And, it has a beeping and auto sensing</p> <p>20 light, that flashes to indicate there is an airflow</p> <p>21 restriction, and your clothes will take longer to</p> <p>22 dry. And, then it gives some reasons why you might</p> <p>23 have restricted airflow.</p> <p>24 And, then it also has a continuing beeping</p>
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<p>1 Q. Dr. Vigilante, in conjunction with your work</p> <p>2 in the Cloud case, or in any of the other Electrolux</p> <p>3 cases you have been retained in, have you compared</p> <p>4 Electrolux's product literature with that from any</p> <p>5 other dryer manufacturer?</p> <p>6 A. Not directly for the Cloud matter.</p> <p>7 Q. Okay. But for other matters, have you?</p> <p>8 Have you done that comparison?</p> <p>9 A. I have looked at other material provided by,</p> <p>10 for example, Whirlpool, and Maytag.</p> <p>11 Q. Okay. And, are copies of those manuals</p> <p>12 within your materials. Is it on the CD?</p> <p>13 A. I didn't rely upon them specifically in this</p> <p>14 case, so they are not.</p> <p>15 Q. Okay. And, why did you compare to the other</p> <p>16 dryer manufacturers' literature?</p> <p>17 A. I don't know that I -- one of the things I</p> <p>18 looked at was this issue about the indicator light,</p> <p>19 and whether or not they had an indicator light. So,</p> <p>20 I would have looked at -- I take that back. There</p> <p>21 may be some manuals from -- I'm sorry.</p> <p>22 Yes, so I do have, like, a Fisher & Pakel</p> <p>23 dryer manual, and a Maytag Bravos XL manual -- I'm</p> <p>24 sorry, that's a washer; not a dryer.</p>	<p>1 and one, or more, progress lights flashing to</p> <p>2 indicate a fault that requires repair from a service</p> <p>3 agent.</p> <p>4 Q. Okay. So going back to my original</p> <p>5 question, you have not done any comparison of</p> <p>6 Electrolux's literature to the Owner's Guide</p> <p>7 Installation Instructions to any other dryer</p> <p>8 manufacturer's literature. Is that correct?</p> <p>9 A. Specifically, for this case?</p> <p>10 Q. Just in general, in terms of your work on</p> <p>11 Electrolux, on cases involving Electrolux dryers?</p> <p>12 A. I think I would say that I didn't do an</p> <p>13 analysis to directly compare how Electrolux</p> <p>14 describes the fire hazard associated with lint</p> <p>15 buildup, and/or the need to have the dryer cleaned</p> <p>16 every 18 months, specifically.</p> <p>17 Q. Okay. How about, have you looked at other</p> <p>18 dryers, manufactured by other manufacturers, to</p> <p>19 assess if they present cleaning information on the</p> <p>20 product, or warnings regarding the cleaning</p> <p>21 requirement?</p> <p>22 A. I know Electrolux sells a Laundry Center</p> <p>23 that has that information on the dryer. But, I</p> <p>24 don't know if I've looked at, or found, other dryers</p>

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<p style="text-align: right;">106</p> <p>1 that have similar information on them.</p> <p>2 Q. You didn't look, or you didn't find any?</p> <p>3 I'm sorry, I just want to clarify.</p> <p>4 A. I never did, like, a survey in the field to</p> <p>5 determine it. But, I don't recall ever seeing one.</p> <p>6 Q. Does the dryer you have, does it have</p> <p>7 on-product labels?</p> <p>8 A. It does.</p> <p>9 Q. Okay. And, do you know what type of</p> <p>10 information is conveyed on those labels?</p> <p>11 A. I would have to guess. At one point, I did</p> <p>12 know, but specifically if it's on there, I don't</p> <p>13 recall.</p> <p>14 Q. Do you know who manufactured your dryer?</p> <p>15 A. I don't know who manufactured Kenmore, but</p> <p>16 it wasn't Electrolux.</p> <p>17 Q. Right.</p> <p>18 A. So, I don't know if it was Maytag, or some</p> <p>19 other Japanese company, or what have you.</p> <p>20 Q. Okay. In the literature for your dryer,</p> <p>21 have you had an opportunity to review that</p> <p>22 literature?</p> <p>23 A. I probably, maybe, scanned it when I first</p> <p>24 got it, but I haven't seen the literature in a</p>	<p style="text-align: right;">108</p> <p>1 Q. So if we are facing your dryer, is the right</p> <p>2 side the hinge side?</p> <p>3 A. It is now.</p> <p>4 Q. Did you reverse the door?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So, do you know where the label is?</p> <p>7 A. I don't recall.</p> <p>8 Q. Okay. How would you define adequate with</p> <p>9 regards to warnings?</p> <p>10 A. Adequate would be located when and where the</p> <p>11 user is likely to see it, notice it.</p> <p>12 Adequate would be a warning that would grab</p> <p>13 a user's attention.</p> <p>14 Adequate would provide a message that the</p> <p>15 user understands to be able to identify the specific</p> <p>16 hazard, and how to avoid it, and the consequences</p> <p>17 for not avoiding it.</p> <p>18 An adequate warning would motivate a user to</p> <p>19 comply with the statement in the warning.</p> <p>20 An adequate warning would have a cost of</p> <p>21 compliance that does not outweigh -- or isn't -- is</p> <p>22 outweighed by the benefits of complying.</p> <p>23 Q. Say it again, cost of compliance is not --</p> <p>24 A. You have to have a reasonable cost of</p>
<p style="text-align: right;">107</p> <p>1 number of years.</p> <p>2 Q. Do you know if there is a periodic cleaning</p> <p>3 requirement, that's set forth in the literature?</p> <p>4 A. My guess is there is because it's required</p> <p>5 under -- I don't remember if it was the ANSI code,</p> <p>6 or the UL code, but my guess is there is. But, I</p> <p>7 don't recall.</p> <p>8 Q. Do you know if there is a cleaning</p> <p>9 requirement, do you know if it is communicated on</p> <p>10 any of the dryer labels?</p> <p>11 A. I don't know.</p> <p>12 Q. And, how many on-product labels are on your</p> <p>13 dryer?</p> <p>14 A. There's one on the front of the dryer, and</p> <p>15 at least one in the back. Other than that, I don't</p> <p>16 know.</p> <p>17 Q. So, on the front of the dryer, where on the</p> <p>18 front of the dryer?</p> <p>19 A. It's in the door frame.</p> <p>20 Q. In the same spot as the long skinny label,</p> <p>21 that is Vigilante-8, or in a different place?</p> <p>22 A. Somewhere in that general area. I don't</p> <p>23 remember if it's on the right side, or the left</p> <p>24 side.</p>	<p style="text-align: right;">109</p> <p>1 compliance.</p> <p>2 Q. A reasonable cost of compliance. Okay.</p> <p>3 And, how would you define effective with</p> <p>4 regard to warning, an effective warning?</p> <p>5 A. The same thing. The only thing I would say</p> <p>6 is that the difference between adequate and</p> <p>7 effective is that you can never have an adequate</p> <p>8 warning if there's a design, or guarding solution,</p> <p>9 to mitigate the hazard that's not used. But in lieu</p> <p>10 of the guard, or the design solution, you chose to</p> <p>11 use the warning instead.</p> <p>12 So, in that case, you can provide effective</p> <p>13 warning, but it would not be adequate if there's a</p> <p>14 design or guarding solution, that could be</p> <p>15 implemented, that's feasible, and economical, and so</p> <p>16 forth.</p> <p>17 Q. So if there is a feasible design solution to</p> <p>18 eliminate the hazard, a warning can't be effective?</p> <p>19 A. A warning should never be used in that</p> <p>20 instance. And, if it is, it's inappropriate and</p> <p>21 improper.</p> <p>22 Q. For a warning, or instruction, to be</p> <p>23 adequate -- oh, sorry.</p> <p>24 A. I'm sorry, just to clarify: My statement is</p>

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<p style="text-align: right;">110</p> <p>1 from a manufacturing perspective. So if you're a 2 designer of the manufacturer, you should never 3 relegate safety to a warning that you can -- you 4 should never relegate a hazard safeguarding to a 5 warning, when you can eliminate it through design 6 feasibly and economically, and so forth. 7 Q. We talked earlier in your deposition about 8 times you were retained on behalf of a product 9 manufacturer to look at warnings, to assess 10 warnings. And we talked about the horse bridle, and 11 the reusable target. Do you remember that? 12 A. Yes. 13 Q. In any of those situations, did you 14 recommend a design change? 15 A. I don't believe so. The only one that I had 16 question of was the reusable target, was to make 17 sure there was no -- I think the issue was to make 18 sure there was nothing toxic about the substances 19 used to create the target. So, that was one of the 20 issues. 21 I remember that was one of the issues, that 22 I talked to the manufacturer about, to make sure he 23 knew what was used to make the product because it 24 had a residue that would come off in handling it.</p>	<p style="text-align: right;">112</p> <p>1 A. It depends on the project, and it depends on 2 the hazard, and it depends upon the risk of 3 encountering that hazard. So, it's a multifactor 4 decision that has to be made. 5 Q. Can you give me an example, using any of the 6 products that you consulted on, that we talked about 7 earlier in the deposition, as to what would be a 8 reasonable percentage of acceptance? 9 A. Well, for example, I think a vivid example 10 would be, maybe, the tree chipper. There are pinch 11 points, and other places, where the body can get 12 mangled, as you can imagine being a large piece of 13 machinery. So between the design of the guard, and 14 the warning, you would hope for, and would desire, 15 100 percent safety. That should be the goal. 16 If you experience one out of a million 17 times, that is, the user does something on purpose, 18 you wouldn't blame the warning for it. But you 19 would expect, from an overall safety standpoint, to 20 be capturing just about all of the potential 21 inadvertent contacts with that hazard. 22 Q. Okay. The standard that you cite in your 23 report, the warning standard, Z535.4, that doesn't 24 specifically apply to clothes dryers; is that</p>
<p style="text-align: right;">111</p> <p>1 But, I don't believe that there was anything of a 2 toxic nature either from skin contact, or 3 respiratory-wise, associated with the components of 4 the product. 5 Q. So the basis for your opinion that you 6 should never relegate to warnings what can be 7 designed out in the product, where does that come 8 from? Is that just the design hierarchy? 9 A. That is the safety hierarchy. 10 Q. Safety hierarch. 11 A. So it's been the prevalent thought in 12 product safety, and occupational workplace safety, 13 for decades. 14 The first time I have seen it specifically 15 laid out in paper, I think was in the 1950's edition 16 of the National Safety Council of Accident 17 Prevention Manual. 18 Q. For a warning to be adequate, do you have to 19 have 100 percent compliance? 20 A. No. 21 Q. What percentage of compliance would be 22 acceptable to you? 23 A. A reasonable percentage. 24 Q. So, what would that be?</p>	<p style="text-align: right;">113</p> <p>1 correct? 2 A. It doesn't specifically apply to clothes 3 dryers. It applies specifically to product 4 warnings. 5 Q. Is it mandatory that Electrolux comply with 6 that standard, in your mind? 7 A. In my mind, or in the world? 8 Q. In your world. 9 A. Yes. So, in my opinion, it's a minimum 10 standard that manufacturers should be striving to 11 meet. 12 From a regulatory standpoint, or code 13 standpoint, it is not required. It's a voluntary 14 minimum consensus standard. 15 Q. We talked about the label, marked as 16 Vigilante-8, with regard to the dryer standard, the 17 ANSI Z21.5.1. 18 Did you do any analysis with regard to the 19 product literature, and whether it complied with 20 ANSI Z21.5.1? 21 A. Yes. So, I'm not aware of it not complying. 22 Essentially, if the standard says that there's 23 certain information that has to be provided on the 24 label, and the manual, that doesn't give all that</p>

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<p style="text-align: right;">114</p> <p>1 much guidance on how to present the information, how</p> <p>2 to format the information, or where specifically to</p> <p>3 put it.</p> <p>4 UL has a -- which is also applicable to this</p> <p>5 dryer -- it does have a requirement that operation</p> <p>6 and maintenance should be visible at the point of</p> <p>7 operation and maintenance. And that's one of the</p> <p>8 standards that I note in my report, that were not</p> <p>9 met by Electrolux with regard to a lint fire hazard.</p> <p>10 Q. And, I understand that this dryer was a gas</p> <p>11 dryer. Right?</p> <p>12 A. This is a gas dryer, but according to Mr.</p> <p>13 King, and Mr. Ripley, they applied the UL 2158</p> <p>14 standard to it.</p> <p>15 Q. So if you were hired by a dryer manufacturer</p> <p>16 to create on-product labels, and literature, what</p> <p>17 standard would you use?</p> <p>18 A. Well, it depends on the product. So using</p> <p>19 the dryer as an example, I would ask the</p> <p>20 manufacturer what standards are specifically</p> <p>21 applicable to the dryer, to the product.</p> <p>22 So, for example, if Electrolux had hired me</p> <p>23 back in 2003, they would have told me the ANSI</p> <p>24 Standard, again, the gas standard, and the UL 2158</p>	<p style="text-align: right;">116</p> <p>1 like I said, the standards, through what the</p> <p>2 competition has done, or recognized what they have</p> <p>3 recognized through their hazard analysis, what they</p> <p>4 have recognized through their service data, their</p> <p>5 warranty data, their incident data.</p> <p>6 Then, you look at hazards that have been</p> <p>7 identified. I would want to know which ones have</p> <p>8 been relegated to warnings, and I would ask them if</p> <p>9 there was a way to design out a guard in any of the</p> <p>10 warnings.</p> <p>11 If I was left with hearing the warnings that</p> <p>12 cannot be designed out, or guarded against, I would</p> <p>13 look to see how, and where, it was best to go about</p> <p>14 providing that information to the user.</p> <p>15 Q. And, how would you go about figuring that</p> <p>16 last part out? How do you communicate that to the</p> <p>17 consumer and user?</p> <p>18 A. It depends on multiple things. So, first,</p> <p>19 if it's a hazard that you couldn't address higher in</p> <p>20 the safety hierarchy, and you were going to be</p> <p>21 relying upon warnings, I would want to look at the</p> <p>22 severity of the hazard. I would want to look at the</p> <p>23 likelihood of encountering it, and the number of</p> <p>24 people exposed. And, I would want to look at</p>
<p style="text-align: right;">115</p> <p>1 Standard. So I would have looked through them to</p> <p>2 make sure that the items, that were covered in</p> <p>3 there, were done.</p> <p>4 I would have also asked Electrolux what</p> <p>5 hazards have they identified through their hazard</p> <p>6 analysis.</p> <p>7 I would have asked them what hazards that</p> <p>8 they identified through their incident reporting,</p> <p>9 their warranty, and service data.</p> <p>10 And then I would have asked them how they</p> <p>11 were dealing with those hazards, and if they were</p> <p>12 relegating warnings, then I would have included that</p> <p>13 in my decision making.</p> <p>14 Q. So, with regard to the hazards you identify,</p> <p>15 would you have suggested to Electrolux that they</p> <p>16 design that out, or would it have been appropriate</p> <p>17 to warn on an on-product label?</p> <p>18 A. I'm not sure -- I'm sorry, I'm not following</p> <p>19 you.</p> <p>20 Q. Okay.</p> <p>21 A. First of all, if I'm hired by Electrolux,</p> <p>22 they're hiring me as a warnings consultant. I</p> <p>23 wouldn't be identifying the hazard. I would be</p> <p>24 relying upon them to identify the hazards through,</p>	<p style="text-align: right;">117</p> <p>1 whether or not the hazard is something that is</p> <p>2 readily recognized by the user population. And,</p> <p>3 that would factor into how, and where, I present the</p> <p>4 information.</p> <p>5 So, for example, if it's a greatest hazard</p> <p>6 associated with the use and operation of the dryer,</p> <p>7 that everyone who used it is potentially exposed,</p> <p>8 and that there was a fairly high likelihood that an</p> <p>9 event would occur, and no one knows that the fire</p> <p>10 hazard exists, or can exist, or the prevalence of</p> <p>11 it, or the other characteristics of it, then I would</p> <p>12 want to make sure that information was on the dryer.</p> <p>13 And, I would want to make sure that information was</p> <p>14 readily visible, and readily available, that it</p> <p>15 specifically called out the hazard, and explicitly</p> <p>16 described what was necessary to deal with it.</p> <p>17 Q. Then, what would you do, if anything?</p> <p>18 A. That would be my recommendation. Then if I</p> <p>19 have to work with the manufacturers, designers,</p> <p>20 engineers in designing, and developing, the warning,</p> <p>21 I would certainly do that.</p> <p>22 The other thing I would also ask is whether</p> <p>23 or not there could be an active warning implemented</p> <p>24 into the design.</p>

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<p>1 Q. When you say "active warning," like an</p> <p>2 indicator light, or --</p> <p>3 A. Or a beeper, audible, or an indicator light.</p> <p>4 Q. You are familiar with the concept of over</p> <p>5 warning. Right?</p> <p>6 A. Sure.</p> <p>7 Q. Okay. And, what do you understand that to</p> <p>8 be?</p> <p>9 A. Well, the issue is that if you provide too</p> <p>10 many warnings, much like too much information -- and</p> <p>11 one of the reasons why we don't rely upon manuals</p> <p>12 for critical safety information is that it can</p> <p>13 overload people. That is, it can be so much</p> <p>14 information that they are not motivated to read it.</p> <p>15 It could be that there's so much information, that</p> <p>16 they can't retain it all. There's so much</p> <p>17 information that it just gets lost in the shuffle.</p> <p>18 So much information that is irrelevant, or</p> <p>19 unimportant, that the rest of the information is</p> <p>20 ignored because it also seems to be irrelevant.</p> <p>21 The other side of over warning is, again,</p> <p>22 with respect to the safety hierarchy. If you're</p> <p>23 doing your job correctly from a design and</p> <p>24 manufacturing standpoint, there shouldn't be a risk</p>	<p>1 Q. Do you agree that a consumer has a</p> <p>2 responsibility to read, and comply, with the</p> <p>3 manufacturer's warnings, and instructions?</p> <p>4 A. If they're provided in an adequate fashion,</p> <p>5 they should.</p> <p>6 Q. And, you agree that consumers have</p> <p>7 responsibility to maintain their product in accord</p> <p>8 with how a manufacturer instructs?</p> <p>9 A. If it's reasonable, and they're adequately</p> <p>10 warned, and informed.</p> <p>11 Q. Do you agree that it's reasonable for a</p> <p>12 manufacturer to expect that consumers are going to</p> <p>13 read, and comply with their warnings?</p> <p>14 A. If they provide adequate warnings in the</p> <p>15 requirements, and comply is reasonable.</p> <p>16 Q. I would like to turn to your proposed</p> <p>17 warnings in this matter, if that's okay with you.</p> <p>18 And, you indicated earlier in your deposition that</p> <p>19 there were some changes to the warnings that are in</p> <p>20 your report. Is that right?</p> <p>21 A. Yes. The warnings, that are in my report, I</p> <p>22 had updated in later reports. So the printout you</p> <p>23 have in your hand is the copy of the warning, I</p> <p>24 believe, from Vitale. That was based upon the</p>
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<p>1 of over warning because you should be capturing</p> <p>2 these hazards, and mitigating them through design</p> <p>3 and through guarding issues.</p> <p>4 If, at the end of the day, when you are done</p> <p>5 with your design process, and you've got too many</p> <p>6 warnings, that you're worried about over warning,</p> <p>7 there's likely something wrong with your development</p> <p>8 processing and design. And, they really should go</p> <p>9 back to the drawing board to figure out how they can</p> <p>10 eliminate, and mitigate, these hazards from a higher</p> <p>11 level of the safety hierarchy.</p> <p>12 Q. Is there, in your mind, an ideal number of</p> <p>13 on-product warnings?</p> <p>14 A. Yes. It depends on the situation, the</p> <p>15 product, and the hazards.</p> <p>16 Q. Is there any research, that is that you have</p> <p>17 done, or that you're aware of, or studies, that</p> <p>18 address how many such warnings should be on a</p> <p>19 product? Or, does it really just depend on the type</p> <p>20 of product.</p> <p>21 A. Again, it depends on the product. It</p> <p>22 depends on the hazards. It depends on people's</p> <p>23 knowledge, and it depends upon what other safety</p> <p>24 measures were taken to protect the user.</p>	<p>1 scheduling. The Vitale report was done after the</p> <p>2 Cloud report.</p> <p>3 Q. Okay. Actually, I will mark the copies you</p> <p>4 have. So I am going mark each one of them, so</p> <p>5 there's no confusion.</p> <p>6 Before I mark this, is this the warning that</p> <p>7 corresponds with Illustration 1 in your report? Is</p> <p>8 this the updated version?</p> <p>9 A. Yes, it's updated -- I'm sorry. Let me see</p> <p>10 it one more time.</p> <p>11 Q. Okay. I just want to make sure.</p> <p>12 A. Yes. That is the updated version of</p> <p>13 Illustration 1.</p> <p>14 MS. YEMMA: Okay. We're going to</p> <p>15 mark that as Vigilante-9.</p> <p>16 (Updated version of warning</p> <p>17 corresponding to Illustration 1 marked</p> <p>18 Vigilante Exhibit No. 9 for identification.)</p> <p>19 MS. YEMMA: And, the document I'm</p> <p>20 holding, is that the update to Illustration</p> <p>21 3?</p> <p>22 THE WITNESS: Yes.</p> <p>23 MS. YEMMA: All right, we will mark</p> <p>24 that as 10.</p>

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<p>1 (Updated version of warning 2 corresponding to Illustration 3 marked 3 Vigilante Exhibit No. 10 for 4 identification.) 5 BY MS. YEMMA: 6 Q. Dr. Vigilante, the document I am holding up, 7 this is the update to Illustration 4, or -- 8 A. I don't know that I updated number four. Do 9 you mind if I take a look? 10 Q. Yes, that's fine. I am not going to mark it 11 if it's not, so... 12 A. Yes, I did not update Illustration 4 in my 13 report. 14 Q. Okay. Then, I am not going to mark that. 15 A. Okay. 16 Q. So, I'm going to hand you the marked copies 17 of Vigilante 9, and 10. And if you would for the 18 record, -- I think you just did -- but for 19 completeness sake, if you can confirm, Vigilante-9, 20 that's the update to Illustration 1. Right? 21 A. Yes. 22 Q. And, if you could identify, for the record, 23 what are the differences between what's been marked 24 as Exhibit 9, and Illustration 1?</p>	<p>1 was, like, 575 or 600 -- for the yellow light to 2 come on, to indicate that it needs to be cleaned. 3 Then once it hits 625 cycles, the heating source 4 would shut down, the red light would come on, and 5 the warning would tell them to get the thing 6 cleaned; this is why it's not working. 7 Q. Any other reason for the update on the 8 warning, other than Mr. Stoddard's opinion? 9 A. I think that was it. I think that was the 10 reason why I started updating it. 11 Q. Okay. And with regard to what's been marked 12 as Vigilante-9 -- and we'll just work off of the 13 exhibits as opposed to what's in your report because 14 it's -- well, essentially you're withdrawing that 15 label, that's in your report. Is that right? 16 A. Yes, because that begins my understanding 17 that Mike changed his opinions -- I should say 18 modified, or updated, his opinions with regard to 19 the indicator light. So, I wanted to be consistent. 20 Q. Okay. And, you also removed the language in 21 Illustration 1 where it says "Service Indicator 22 Light:" Do you see that? 23 A. Yes. I changed it. 24 Q. Okay. What was the reason for changing it?</p>
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<p>1 A. I essentially rewrote the first bullet 2 point, and the sub bullet points for that warning. 3 Q. And, why did you rewrite those bullet 4 points? 5 A. Part of it was the fact that I think Mike 6 Stoddard changed his -- or updated his opinions with 7 regard to the indicator light. 8 Initially, he was advocating a single light, 9 and then he eventually went to a red and yellow 10 light. 11 Q. And, what's your understanding as to how the 12 red and yellow light would work? 13 A. The yellow service indicator light flashes. 14 It's indicating to the user to have the machine 15 service cleaned by an authorized, qualified, et 16 cetera, technician. 17 When the red service light would come on 18 when the drying heating source, either the gas or 19 electric, burn would be shut off. 20 So yellow indicator light -- I don't 21 remember the exact numbers offhand -- would trigger 22 before the 18-month cleaning cycle, which was 23 approximately 625 cycles. So, I don't remember, 24 offhand, exactly what cycle Mr. Stoddard used -- it</p>	<p>1 A. I thought it read better when I rewrote it. 2 Q. How did you come up with the warning that we 3 see in Vigilante-9? 4 A. It was based upon my understanding of the 5 lint buildup fire hazard that Electrolux has 6 identified as the greatest hazard associated with 7 their dryer. 8 And then based upon my understanding of what 9 Mike Stoddard opined, and concluded, was feasible 10 with regard to the cycle counter, and air exhaust 11 monitor. 12 Q. So, in your opinion, the warning in 13 Vigilante-9, that's an adequate warning for the 14 Electrolux dryer at issue? 15 A. Yes. If it's used in conjunction with the 16 safeguard, it would be an adequate warning. 17 Q. Would it be an effective warning? 18 A. Yes. 19 Q. And, how did you reach the conclusion that 20 the warning in Vigilante-9 is an adequate, and 21 effective, warning? 22 A. It's adequate, again, because it's used in 23 conjunction with the feasible safeguarding cycle 24 counter, and airflow monitor devices.</p>

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<p style="text-align: right;">126</p> <p>1 It's effective because it meets the</p> <p>2 requirements of the ANSI Z535.4 standards, and it's</p> <p>3 consistent with the guidelines, and recommendations,</p> <p>4 laid out in the Human Factors and Warnings</p> <p>5 Literature. And, it's consistent with the</p> <p>6 on-product warnings, that I have tested, personally,</p> <p>7 in my professional career in designing, and</p> <p>8 developing, on-product warnings.</p> <p>9 Also, being used in conjunction with the --</p> <p>10 I already covered that -- used in conjunction with</p> <p>11 the indicator lights.</p> <p>12 Q. Right, right. So this warning is intended</p> <p>13 to be used with the indicator lights, the red and</p> <p>14 the yellow. Is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Have you tested the warning in</p> <p>17 Vigilante-9 with any live subjects?</p> <p>18 A. I have not done an experiment where I have</p> <p>19 brought in live subjects to interact with the</p> <p>20 warning.</p> <p>21 Q. Any reason why not?</p> <p>22 A. Well, (a) it wasn't necessary; (b), there's</p> <p>23 issues of costs, and time. Not being a</p> <p>24 manufacturer, I don't have deep pockets to bring</p>	<p style="text-align: right;">128</p> <p>1 indicator lights.</p> <p>2 Q. And, where are the indicator lights supposed</p> <p>3 to be located, or at least proposed to be?</p> <p>4 A. Give me one second.</p> <p>5 Q. Take your time.</p> <p>6 A. I just wanted to see where Mike Stoddard had</p> <p>7 put the indicator light.</p> <p>8 So, it should have been on the top of the</p> <p>9 dryer towards the back of the console. This is a</p> <p>10 rear console dryer, so it would have been on the top</p> <p>11 of the dryer, back under the light near the rear</p> <p>12 console.</p> <p>13 Q. Okay. So the label wouldn't be on the</p> <p>14 console; right?</p> <p>15 A. For this one, it would be under it -- on top</p> <p>16 of the dryer under the console. Not directly under</p> <p>17 it, in front of it, but on the base of the console</p> <p>18 is probably a better way to put it.</p> <p>19 Q. Okay. And, how big do you propose that the</p> <p>20 label be?</p> <p>21 A. Vigilante-9 and 10 did not print out for the</p> <p>22 size but, for whatever reason, they got moved. But,</p> <p>23 I did have a specific size in mind for them.</p> <p>24 Q. Is it the size that's in your report, or is</p>
<p style="text-align: right;">127</p> <p>1 people in.</p> <p>2 Q. With regard to the first one, you said "not</p> <p>3 necessary." Why not? Why is it not necessary to</p> <p>4 experiment with live subjects with regard to this</p> <p>5 label?</p> <p>6 A. It's not necessary because it's in</p> <p>7 conjunction with the active warnings, being the</p> <p>8 indicator lights, the safe features, the safeguards,</p> <p>9 of the cycle counter, and the airflow monitor, and</p> <p>10 the fact that it's designed consistent with the</p> <p>11 standards, and guidelines, and recommendations, in</p> <p>12 my prior experience.</p> <p>13 Q. Okay. Let's turn to Illustration --</p> <p>14 A. One other point. One other thing, too, it's</p> <p>15 also in the fact that in the manner in which I</p> <p>16 suggested it be presented on the dryer would make it</p> <p>17 readily visible and conspicuous at all times.</p> <p>18 So, it wasn't an issue of, you know, will a</p> <p>19 user see it. It's going to be readily visible.</p> <p>20 Q. And, what is your -- and I remember you did</p> <p>21 give this testimony in Vitale. But if you could,</p> <p>22 just for this record, where do you propose that the</p> <p>23 warning, Vigilante-9, be placed on the dryer?</p> <p>24 A. It should be placed adjacent to the</p>	<p style="text-align: right;">129</p> <p>1 it larger?</p> <p>2 A. I have to go back into --</p> <p>3 Q. Okay. Take your time.</p> <p>4 A. I don't have the size noted, but I believe</p> <p>5 it was like on the order of about 5 to 6 inches</p> <p>6 wide, by about 4 inches tall, if I'm not mistaken.</p> <p>7 I wasn't too worried about the size of these two</p> <p>8 because there's a lot of real estate up on the top</p> <p>9 of the dryer.</p> <p>10 So I think Illustrations 1 and 3 would be</p> <p>11 the minimum size for the warnings. And, the same</p> <p>12 thing with Illustration 4.</p> <p>13 Q. When I deposed you in the Vitale matter, you</p> <p>14 had testified that you used a heuristic evaluation</p> <p>15 in conjunction with creating these warnings. Is</p> <p>16 that still true?</p> <p>17 A. Yes, in conjunction with the assessment of</p> <p>18 the standards, recommendations, and practices</p> <p>19 readout in the literature.</p> <p>20 Q. Can you take me step-by-step through your</p> <p>21 heuristic evaluation with regard to these warnings?</p> <p>22 A. For the ones Electrolux provided, or the</p> <p>23 ones I provided?</p> <p>24 Q. Let's talk about just what you provided.</p>

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<p>1 A. Okay.</p> <p>2 Q. And, then we can talk about Electrolux.</p> <p>3 A. Again, I start with an understanding of what</p> <p>4 the hazard is, and where it falls in the risk</p> <p>5 assessment of the product, and what people know, or</p> <p>6 don't know, and what people do, and don't do.</p> <p>7 So based upon that information, I came to</p> <p>8 the conclusion that it needed to be on the product</p> <p>9 as opposed to solely in the manual.</p> <p>10 Secondly, what I did is I looked at what</p> <p>11 information, or safeguards, were going to be</p> <p>12 provided in conjunction with the warning, and that</p> <p>13 gets back into what Mr. Stoddard was doing with the</p> <p>14 indicator light, or lights, as the case may be.</p> <p>15 I also looked at the area in which the</p> <p>16 warning could be provided. So some of these dryers,</p> <p>17 that I have worked on, are front consoles. This one</p> <p>18 happened to be a top console. So, that would affect</p> <p>19 whether or not I was concerned particularly about</p> <p>20 the placement issues.</p> <p>21 Next, I looked to make sure that I am</p> <p>22 identifying a specific hazard, and that I am</p> <p>23 providing explicit information regarding the hazard,</p> <p>24 and how to avoid it, and so forth.</p>	<p>1 lady that traditionally develop issues with visual</p> <p>2 acuity as people age, that several feet from the</p> <p>3 warning, that small font size that's used on the</p> <p>4 label on the Laundry Center, is not going to be</p> <p>5 legible to a certain segment of the population.</p> <p>6 So when I was designing, and looking at,</p> <p>7 warnings in Illustrations 1 and 3, there was a</p> <p>8 minimum font size that I wanted to hit based upon</p> <p>9 the expected viewing distance.</p> <p>10 So we don't, as in the Laundry Center, we</p> <p>11 don't have the issue of looking above us. We have</p> <p>12 it either being right in front of us, or right on</p> <p>13 top of the top console.</p> <p>14 Q. So earlier in your testimony, you gave me a</p> <p>15 list of all different types of evaluations that you</p> <p>16 could pick from. Heuristic was one of them; hallway</p> <p>17 testing, experiments, live subjects, et cetera.</p> <p>18 Why did you pick heuristic for this in</p> <p>19 conjunction with designing these labels?</p> <p>20 A. Well, I used it in conjunction with</p> <p>21 comparing it, and being consistent with the</p> <p>22 standard, ANSI Z535.4 standard, and the</p> <p>23 recommendations, and guidelines, in the Human</p> <p>24 Factors and Warnings Literature. That was adequate</p>
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<p>1 And then I draft the label consistent with</p> <p>2 good formatting practices, including use bullet</p> <p>3 points, use of white spacing, ensure that the text</p> <p>4 size is sufficient both from a legibility</p> <p>5 standpoint, and from a readability standpoint, and</p> <p>6 at distances at which it would be encountered.</p> <p>7 So the warning's going to be within about</p> <p>8 two feet of the user's eyes, so maybe three feet,</p> <p>9 tops. So, as long as the warning is, you know .10</p> <p>10 font, and above, it shouldn't be a problem.</p> <p>11 Q. When you say "it shouldn't be a problem,"</p> <p>12 what do you mean by that?</p> <p>13 A. From a visibility standpoint, a readability</p> <p>14 standpoint. So, it could be -- I'll give you an</p> <p>15 example: Electrolux has a Laundry Center, and they</p> <p>16 put the warning for cleaning on a little label</p> <p>17 that's on the top of the door frame.</p> <p>18 When you look at the population of users,</p> <p>19 you find out that that warning is some distance away</p> <p>20 from where the viewer's going to be, several feet.</p> <p>21 And you look at the legibility requirements for</p> <p>22 print size for those distances for the expected</p> <p>23 population, and the print is too small.</p> <p>24 So I think a case where you have a little</p>	<p>1 to develop a warning for what I was doing.</p> <p>2 Q. Okay. And, how did you learn to conduct</p> <p>3 heuristic evaluations?</p> <p>4 A. Through graduate school training, and</p> <p>5 experience.</p> <p>6 Q. What experience?</p> <p>7 A. Well, both, in the laboratory, you know, at</p> <p>8 North Carolina State University, I did a lot of</p> <p>9 those formatting papers we talked about earlier, the</p> <p>10 prioritization papers we talked about earlier. I</p> <p>11 manipulated these variables for products, and then</p> <p>12 set them in front of people, and see how they</p> <p>13 reacted, and see how the performance differed based</p> <p>14 upon how these variables were manipulated.</p> <p>15 So I know, based upon my own firsthand</p> <p>16 experience with manipulating these variables, how it</p> <p>17 affects people's likelihood of seeing, reading,</p> <p>18 comprehending, and so forth.</p> <p>19 When I was with the IBM Corporation, I used</p> <p>20 all different types of techniques, depending upon</p> <p>21 the project, the time, the resources, and et cetera.</p> <p>22 And, the same thing, I know how developing and</p> <p>23 designing things certain ways, the results of that</p> <p>24 when I actually do bring people into a lab.</p>

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<p style="text-align: right;">134</p> <p>1 Q. So, what type of variables are you talking 2 about? Like, are you talking about the font, the 3 color? 4 A. Yes. You're looking at issues such as where 5 it's located, how it's located, what it's used in 6 conjunction with, the size of the font, the type of 7 message that you're giving, the type of white 8 spacing that you're using. 9 So, all those different types of formatting 10 and presentation of variables. 11 Q. What variables have you found to increase 12 the likelihood that a warning will be noticed, and 13 read? 14 A. Where it's located in conjunction with where 15 the operator is expected to be interacting with the 16 controls is one of them. 17 And (2), the size of the font, the use of 18 color, the use of the signal word. So, those are 19 variables I know affects the likelihood of seeing 20 and reading. 21 Again, the use of white space, if you're 22 using a paragraph of pros, people aren't as likely 23 to read use if you're not using mix case. It 24 reduces legibility and readability.</p>	<p style="text-align: right;">136</p> <p>1 are separate. 2 Q. Okay. So can you tell me what those are, 3 the ones that overlap, and that are separate? 4 A. Sure. You've got to be able to communicate 5 the correct message. So, that gets into the 6 specificity and explicitness. So, you want them to 7 know what the issue is. You want them to know what 8 the consequences are. You want them to know what it 9 takes to avoid it. 10 If you're not specific, and you're not 11 specific, in those messages, it reduces 12 understanding, and it can reduce motivation to 13 comply. 14 Motivation to comply is also associated with 15 cost of compliance. So one of the things that helps 16 with Illustration 1 is the fact that it's used in 17 conjunction with safeguards. You are forcing 18 compliance. 19 We talked about, earlier, what is the best 20 compliance rate for a warning. Again, it's 21 dependent upon a hazard, and dependent upon a whole 22 host of things. But if you can provide a warning in 23 conjunction with a safeguard, that forces the 24 compliance, or at least forces you out of a</p>
<p style="text-align: right;">135</p> <p>1 The use of bullet points to emphasize from 2 parts of the message can have an effect on 3 readability and comprehension. 4 All of the -- I should say most of the 5 formatting requirements in ANSI Z535.4 is based upon 6 research. And, the guidelines and recommendations 7 in the Human Factors and Warnings Literature is 8 based upon research. And, a lot of that research 9 was done at the time I was in North Carolina State 10 University. A lot of that research was confirmed in 11 my own research, and a lot of those guidelines, 12 recommendations, and formatting standards, I 13 utilized, and tested, myself at IBM with those 14 products, user testing with other products. 15 Q. You just talked about variables that would 16 increase the likelihood that the label's going to be 17 noticed, the label is going to be seen. Right? 18 A. Yes. 19 Q. What about, are there variables that affect 20 whether a user is going to comply with what the 21 label says? 22 A. Yes. 23 Q. Okay. They're separate, or -- 24 A. Some of them are overlapping; some of them</p>	<p style="text-align: right;">137</p> <p>1 dangerous condition, the warning is used as a 2 supplement so that you understand what that safety 3 feature is doing, why it exists, and what you need 4 to do to keep the machine, or the product, in a safe 5 range, i.e., in this case, get it serviced. 6 One of the problems that I have with not 7 using a design change, or an active safety guard, is 8 that a portion of the population of users having to 9 call out a service guy every year and a half, and if 10 you have to call out two service guys every year and 11 a half, because one guy won't clean the vent, and 12 the other guy won't clean the dryer, you are going 13 to be having these people pay almost as much as they 14 paid for the dryer every other year. 15 You know, a lot of folks are strapped for 16 cash, and that can be a barrier for them having, or 17 giving them the ability, or having the ability to 18 comply with the warning. 19 So, that's a drawback, or that's a 20 limitation of Illustration 3. There is going to be 21 a segment of the population that the cost of 22 compliance is just going to be too high. They are 23 not going to be able to afford to bring the dryer 24 guy out, and bring the vent guy out, every other</p>

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<p style="text-align: right;">138</p> <p>1 year.</p> <p>2 Q. Anything else?</p> <p>3 A. I think that's it.</p> <p>4 Q. Okay. Let's talk about Illustration 2 in</p> <p>5 your report.</p> <p>6 How did you go about creating this</p> <p>7 illustration, this graphic for the manual?</p> <p>8 A. I took that from a service bulletin from</p> <p>9 Electrolux. So, this is an Electrolux produced, and</p> <p>10 provided, illustration.</p> <p>11 Q. And, you are proposing that this be included</p> <p>12 in the manual, and not on the product?</p> <p>13 A. Yes.</p> <p>14 Q. And, why is that?</p> <p>15 A. It's too much information for the product,</p> <p>16 but in the manual, it provides the user with greater</p> <p>17 context as to what's going on.</p> <p>18 So, one of the things I mention in the</p> <p>19 report is that the way Electrolux worded their</p> <p>20 warning regarding a qualified, or authorized,</p> <p>21 servicer, Electrolux never defined it, and</p> <p>22 Electrolux was aware that some users may think that</p> <p>23 they were qualified.</p> <p>24 In conjunction with not telling them what</p>	<p style="text-align: right;">140</p> <p>1 gives the guys actually coming out to do the dryer</p> <p>2 cleaning, more information as to what needs to be</p> <p>3 done.</p> <p>4 Q. With regard to Illustration 3, let's look at</p> <p>5 Vigilante-10.</p> <p>6 So, this is the updated version of</p> <p>7 Illustration 3. Is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And, if you could explain what's the</p> <p>10 difference between Vigilante-10, and Illustration 3?</p> <p>11 A. I changed the wording of the first two</p> <p>12 bullets.</p> <p>13 Q. Why did you do that?</p> <p>14 A. Because I changed the wording in</p> <p>15 Illustration 1.</p> <p>16 Q. So, it's just merely to make it consistent</p> <p>17 with the update to Illustration 1. Is that a fair</p> <p>18 way --</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And, you're adding -- and, please</p> <p>21 correct me if I'm wrong. So, you're adding "near</p> <p>22 the heat source" in bullet one?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And, then the same with regard to</p>
<p style="text-align: right;">139</p> <p>1 needed to be cleaned, or what "interior of the</p> <p>2 machine" means, users could very well think that</p> <p>3 they were qualified to clean the interior of the</p> <p>4 machine.</p> <p>5 So, Illustration 2 in the manual, in</p> <p>6 conjunction with the warning, would give the user an</p> <p>7 indication that this is much more complicated than</p> <p>8 the regular product user is going to be able to do.</p> <p>9 And, it needs more credence into the fact that you</p> <p>10 need a professional to come out, and do it.</p> <p>11 The other benefit is, of course, when a</p> <p>12 professional comes out to do it, like Lint Doctor,</p> <p>13 he knows what's required, or the Sears' service</p> <p>14 technician, or Boscov's service technician.</p> <p>15 Because, as you know through discovery, a lot of</p> <p>16 your technicians don't know what needs to be</p> <p>17 cleaned.</p> <p>18 I think one of the Sears corporate guys</p> <p>19 testified that when they send their out to clean the</p> <p>20 dryer, they don't take the drum out; that they</p> <p>21 weren't aware that they needed to take the drum out,</p> <p>22 or the propensity for lint to build up behind the</p> <p>23 drum.</p> <p>24 So if you provide it in the manuals, it</p>	<p style="text-align: right;">141</p> <p>1 bullet two, right, you're saying -- oh, no, it's</p> <p>2 already there -- no -- in the parenthesis "near the</p> <p>3 heat source" --</p> <p>4 A. Yes.</p> <p>5 Q. -- that's the addition?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. With regard to the warning on</p> <p>8 Vigilante-10, did you perform any experiments with</p> <p>9 live subjects to assess this warning you proposed?</p> <p>10 A. I did not.</p> <p>11 Q. And, did you use the same evaluation, the</p> <p>12 heuristic evaluation, as you did with the warning on</p> <p>13 Vigilante-9?</p> <p>14 A. Yes, in conjunction with the comparison to</p> <p>15 the standards, guidelines, and recommendations.</p> <p>16 THE WITNESS: Can we take a</p> <p>17 five-minute break?</p> <p>18 MS. YEMMA: Yes, absolutely.</p> <p>19 (Brief recess.)</p> <p>20 BY MS. YEMMA:</p> <p>21 Q. Dr. Vigilante, do you believe that the</p> <p>22 Clouds would have followed any of your proposed</p> <p>23 warning labels?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">142</p> <p>1 Q. Why do you believe that?</p> <p>2 A. (A), their testimony that they would have</p> <p>3 followed a warning consistent with what I proposed.</p> <p>4 (B), I didn't see anything in their behavior</p> <p>5 that would suggest that they were irrational, or</p> <p>6 different, than the normal population.</p> <p>7 (C), the research has shown that if you</p> <p>8 provide effective warnings, warnings such as the</p> <p>9 ones I created, people will, in fact, see them, read</p> <p>10 them, heed them, and comply with them.</p> <p>11 And then, finally, the Clouds were taking</p> <p>12 steps to clean their dryer. So, it just would have</p> <p>13 been another step in that direction had they known</p> <p>14 about the potential fire hazard, and the need to</p> <p>15 clean the interior of the dryer.</p> <p>16 Q. Are you making any assumptions as to whether</p> <p>17 the Clouds read the labels that were on their dryer?</p> <p>18 A. I am not.</p> <p>19 Q. Do you know whether they did read the labels</p> <p>20 on the dryer?</p> <p>21 A. I think their testimony was they don't</p> <p>22 recall warnings being on the dryer.</p> <p>23 Q. And, that's my understand, too, that that's</p> <p>24 what they testified to.</p>	<p style="text-align: right;">144</p> <p>1 anything on top of their dryer?</p> <p>2 A. I referenced something about what they did</p> <p>3 in my report. I have to go back, and look.</p> <p>4 The Clouds didn't testify -- at least I</p> <p>5 don't have note of them testifying if they kept</p> <p>6 anything on top of the dryer.</p> <p>7 I am going to look through Mike Stoddard's</p> <p>8 notes, if he noted anything.</p> <p>9 Q. My point is, if a user stores things on</p> <p>10 their clothes dryer all the time, then that's going</p> <p>11 to eliminate their ability to see your warning.</p> <p>12 Wouldn't you agree with that?</p> <p>13 A. It would potentially interfere with their</p> <p>14 ability to see the warning after the first use if</p> <p>15 they immediately started putting stuff on there.</p> <p>16 So it could be, if that's a concern, to put</p> <p>17 it on the front of the dryer, on the front of the</p> <p>18 dryer door, and you wouldn't have that problem.</p> <p>19 But Illustration 1, because it's associated</p> <p>20 with the indicator lights, should go on the top, and</p> <p>21 then the indicator lights are going to provide the</p> <p>22 information to the user, and eventually, if it shuts</p> <p>23 off, the indicator light would tell them that it</p> <p>24 shut off, and the warning underneath the indicator</p>
<p style="text-align: right;">143</p> <p>1 So, in light of that testimony, why do you</p> <p>2 believe that would have, first of all, seen your</p> <p>3 proposed label, and followed what it said?</p> <p>4 A. My label, unlike the label Electrolux put on</p> <p>5 there, would have been readily visible, and</p> <p>6 conspicuous, as opposed to a black and white label</p> <p>7 attached to the inside of a door frame near the</p> <p>8 hinges of the door where it was only visible when</p> <p>9 the door was open, and you were looking inside there</p> <p>10 at that side of the door frame.</p> <p>11 My warning would have been visible each and</p> <p>12 every time they went to turn the dryer on. It would</p> <p>13 have been visible while the dryer was operating, and</p> <p>14 so forth.</p> <p>15 Q. So, you propose putting the label on the top</p> <p>16 of the dryer. But, what if -- and I can't remember</p> <p>17 what the Clouds testified to, and we can talk about</p> <p>18 that -- but, what's preventing a consumer from</p> <p>19 putting things on top of the dryer, that would cover</p> <p>20 up the label?</p> <p>21 A. They could, but it would be there initially</p> <p>22 for them to see, and it would be there every time</p> <p>23 they clean the top of the dryer off.</p> <p>24 Q. Do you know whether the Clouds stored</p>	<p style="text-align: right;">145</p> <p>1 light will tell them why.</p> <p>2 The second thing is, is that Mrs. Cloud</p> <p>3 didn't testify that she never read the label on the</p> <p>4 dryer. She testified she didn't recall whether</p> <p>5 there was a label there, or not. They're two very</p> <p>6 different things.</p> <p>7 Q. I understand.</p> <p>8 A. The other thing I want to mention, too, is</p> <p>9 that Carl King testified that Electrolux chose to</p> <p>10 put their checklist, tape it to the top of the dryer</p> <p>11 to "to be in your face."</p> <p>12 So my proposal is not different than what</p> <p>13 Electrolux itself stated they do, and the reason</p> <p>14 they do it.</p> <p>15 Q. Dr. Vigilante, did you have an understanding</p> <p>16 of whether the Clouds read the product literature</p> <p>17 that came with the dryer?</p> <p>18 A. I just read my notes that Mr. Emil Cloud</p> <p>19 said they received a packet, but he never read it.</p> <p>20 Q. How about Mrs. Cloud, or is that what you</p> <p>21 are looking for?</p> <p>22 A. Yes, I am looking for that. I'm sorry.</p> <p>23 Q. No, no, that's okay.</p> <p>24 A. On Page 40, he said that -- 38 to 39, he</p>

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<p style="text-align: right;">146</p> <p>1 said that the installer left a bag of documents 2 after installing is the dryer. 3 Page 40: He received a booklet with a lot 4 of papers in it. He probably received, and read it, 5 but can't say for sure. He always skims through 6 Owner's Guides for anything he buys. He probably 7 would have the skimmed through the Owner's Guide 8 when they installed the dryer. He never had a 9 reason to go back, and read, the Owner's Guide after 10 he initially skimmed through it. He does not recall 11 any of the warnings in the Owner's Guide. 12 He did not read the Installation 13 Instructions because he paid a professional to do 14 it. 15 Mrs. Cloud testified she recalls getting a 16 booklet with the dryer -- Page 42 -- she does not 17 recognize the Owner's Guide for the dryer. 18 On 43: She testified she does not recall if 19 she received one, or more, booklets. She recalled 20 skimming through the booklet for the dryer. She 21 does not recall anything in the booklet about how 22 the dryer was supposed to be cleaned, and could not 23 specifically recall any one thing she read in the 24 manual.</p>	<p style="text-align: right;">148</p> <p>1 Q. So it's your testimony that if a user 2 understands how to use the dryer, then they don't 3 have to read the Owner's Manual. Is that right? 4 A. That's correct, and Electrolux is well aware 5 of that. 6 Q. Why do you say that? 7 A. Because that's what they testified to. 8 Q. I don't think Carl testified that users 9 didn't have to read the manual. He testified that 10 it's an intuitive product. 11 A. Yes. 12 Q. And, I'm paraphrasing, but -- 13 A. He did, and Ripley testified they designed 14 it to be easy to use. 15 Q. But, I don't think at any point did Carl, as 16 their corporate designee, or any other employee of 17 Electrolux, say that a user does not have to read 18 the manual? 19 A. I didn't say that. 20 Q. Okay. 21 A. I said Electrolux was well aware that people 22 were not reading the manual. So, Carl King 23 testified Electrolux was aware that installers and 24 users do not read the provided manuals. Electrolux</p>
<p style="text-align: right;">147</p> <p>1 43 to 44: She just recalls reading the 2 manual on one occasion when they got the dryer. 3 And on Page 44, she said she never had any 4 reason to look at the manual again. She didn't have 5 any problems with the dryer. 6 And on 44 and 45, she does not recall the 7 Installation Instructions. 8 Q. And, you agree that an owner of a dryer has 9 the responsibility to read the Owner's Manual. 10 Right? 11 A. I don't know that I agree with that. If 12 they don't know how to use the dryer, then they 13 should read the manual. 14 If they know how to read the manual -- I 15 don't know that they're required to read it, and I 16 don't know that it would be unreasonable not to read 17 it. 18 I think Mr. King, and Mr. Ripley, testified 19 they designed the dryer to be intuitive to use, and 20 they wanted it to be easy to use. There's no 21 requirement to read the manual. 22 And, we know that if you're paying someone 23 to install it, there would be no reason the read the 24 Installation Instructions.</p>	<p style="text-align: right;">149</p> <p>1 knows that people can purchase and use dryers 2 without a manual, and Electrolux was well aware that 3 if users did not read the manual, they would 4 probably be unaware of the important 18-month 5 cleaning requirement. 6 Q. Do you have an opinion as to what Electrolux 7 could have done to increase the number of users that 8 were reading the manual? 9 A. I don't have an opinion as to what 10 Electrolux could have done to increase the number of 11 people that read the manual. 12 What I would say is that from a product 13 design standpoint, you would want to design the 14 product in such a way to reduce the need for people 15 to reference a manual. And as part of that, you 16 would want to make sure that critical warnings and 17 safety information were on the product because (a), 18 you want to reduce people's reliance on the need to 19 read the manual. And (b), you know that people 20 don't read the manual, and therefore any critical 21 safety information would need to be on the product. 22 Q. What's the point to having a manual then? 23 A. Manuals are for reference, and they're for 24 folks that either have a question about the product,</p>

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<p style="text-align: right;">150</p> <p>1 can't figure out how to use the product by just 2 trying to use it, or may be unfamiliar with the 3 product. 4 One other way manuals are appropriately used 5 is to provide a more full explanation of a 6 particular warning. 7 So, for example, it would be proper to put a 8 warning on a product that says "Warning: XYZ, bad 9 things can happen. See owner manual, Page 12 for 10 more information." That would be a perfectly 11 acceptable application, or use, of an Owner's 12 Manual. 13 One other caveat, too -- because I don't 14 want to make this too, too broad -- but we're 15 talking about a consumer product. We're not talking 16 about a heavy piece of industrial machinery that a 17 user doesn't have any experience with. 18 So, again, you've got to know your user 19 population, what their experiences are, what their 20 knowledge is, and what they are likely to do, and 21 not do, to determine whether or not a manual is 22 appropriate, or not appropriate, based on critical 23 safety information. 24 Q. Is there ever a situation where it's</p>	<p style="text-align: right;">152</p> <p>1 on the market. I'm not aware if there's any other 2 manufacturers that are still making ball-hitch 3 dryers in the last several years since Electrolux 4 transitioned down to their bulkhead. 5 So, one of the things we haven't described 6 today, and I think we talked about in Vitale -- and 7 if we didn't, I apologize -- but the need for the 8 warranty has to do with the risk of fire due to the 9 design of this product. 10 Q. Right. 11 A. So, a bulkhead dryer doesn't have the same 12 risk. It doesn't have the same -- you don't get to 13 the same end when you do your analysis. So, a 14 warning may not be required for a bulkhead dryer 15 because of the risk level is so much lower. 16 Q. And, that last question I wanted to get to 17 it currently. How about back to when this dryer was 18 manufactured in 2003? 19 A. I didn't do a survey of the dryers in 2003, 20 but I do know that in 2005, Fisher & Pakel did have 21 the indicator light on the dryer, and I know that as 22 of 2005-2006 timeframe, Electrolux, in their better 23 dryer lines, were using indicator codes, if not 24 codes and lights, to warn people of restricted</p>
<p style="text-align: right;">151</p> <p>1 appropriate, or reasonable, for a manufacturer to 2 include critical safety information in the manual? 3 A. Well, my opinion is that if it needs to be 4 on the product, it needs to be on the product, and 5 it should be repeated in the manual. 6 Maybe your question is whether or not it 7 should only be in the manual. 8 Q. Right, should only be in the manual. 9 A. So, again, it depends on the situation. If 10 you have, like, for example, a complicated piece of 11 industrial equipment, the warning related to a 12 maintenance item, the appropriate place may be the 13 manual as opposed to on the product. Because if the 14 maintenance guy, the guy who is running the 15 maintenance department, you know, may not have 16 exposure to the equipment, but he may have exposure 17 to the manual. So, it just depends on the product. 18 Q. On dryers available on the market currently, 19 would we find any dryers that would have 20 substantially similar on-product labels to those 21 you're proposing? 22 A. Currently on the market? 23 Q. Currently on the market. 24 A. I have not done a survey of all the dryers</p>	<p style="text-align: right;">153</p> <p>1 airflow. 2 Q. Okay. So, that answers my question with 3 regard to indicator lights. But are you aware of 4 any dryers -- and we will just make it open-ended -- 5 any dryers ever that had on-product labels that are 6 substantially similar to the ones you're proposing? 7 A. Again, I'm not aware of any. 8 Q. Okay. So earlier in your deposition, you 9 talked about the label -- well, at least the one 10 that was inside the door frame -- and you agree that 11 it did comply with the gas dryer standards. 12 We have not talked about whether you have 13 reviewed the Owner's Guide, and Installation 14 Instructions, and whether you have an opinion as to 15 whether they comply with ANSI Z21.5.1? 16 A. We did. 17 Q. We did talk about that? 18 A. Yes. 19 Q. Okay. And, you said that they did? 20 A. I said that I had no information that they 21 didn't. 22 Q. Okay. So other than the Fisher & Pakel, and 23 the Electrolux dryer, that you mentioned, are you 24 aware of any other dryers in 2003, until the</p>

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<p style="text-align: right;">154</p> <p>1 present, that are using indicator lights?</p> <p>2 A. Not dryers.</p> <p>3 Q. Other products?</p> <p>4 A. Other appliances.</p> <p>5 Q. Okay. What types of appliances are using</p> <p>6 indicator lights, that you're aware of?</p> <p>7 A. Washers, refrigerators, stoves, ovens,</p> <p>8 microwaves, dehumidifiers, vacuums, toasters.</p> <p>9 Q. Okay. You've named every appliance.</p> <p>10 A. A waffle maker.</p> <p>11 Q. Okay. Do you have any --</p> <p>12 A. Griddle.</p> <p>13 MR. LEVINE: Sir, are you done with</p> <p>14 your answer?</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. LEVINE: I'm just trying to</p> <p>17 move on.</p> <p>18 BY MS. YEMMA:</p> <p>19 Q. Okay. Have you reviewed any studies, or</p> <p>20 articles, to support compliance rate for indicator</p> <p>21 lights?</p> <p>22 A. I have in the past. I didn't cite anything</p> <p>23 specifically other than the Woodson's textbook</p> <p>24 regarding the use and need and benefits of indicator</p>	<p style="text-align: right;">156</p> <p>1 For example, he discusses a function active</p> <p>2 lights, which are used to indicate that a particular</p> <p>3 function is occurring. He includes special hazard</p> <p>4 condition lights that present hazards that the</p> <p>5 operator may not be aware unless a warning light is</p> <p>6 provided. He gives some examples of where those</p> <p>7 lights can be helpful.</p> <p>8 He gives an example of malfunction lights,</p> <p>9 the cue that some malfunction has occurred, or is</p> <p>10 about to occur. And, he gives the -- underneath</p> <p>11 malfunction light, he gives the ubiquitous example</p> <p>12 of a dummy light of a dashboard of a vehicle.</p> <p>13 So, I think that's the only thing I</p> <p>14 reference with regard to indicator lights.</p> <p>15 Q. Okay. I think my question was about</p> <p>16 compliance with indicator lights.</p> <p>17 So, any studies to suggest how consumers</p> <p>18 would respond to an indicator light?</p> <p>19 A. There are. I didn't cite any specifically.</p> <p>20 I didn't really think it was necessary.</p> <p>21 Indicator lights have been used for decades</p> <p>22 to indicate the status of a system, and shown to be</p> <p>23 very effective in doing so.</p> <p>24 As I mentioned a little bit earlier, their</p>
<p style="text-align: right;">155</p> <p>1 lights.</p> <p>2 Q. So, what does that article say with regard</p> <p>3 to indicator lights?</p> <p>4 A. The textbook?</p> <p>5 Q. Yes. I don't expect you to be able to</p> <p>6 recall the textbook, but in a nutshell, can you --</p> <p>7 A. It's one of the references that I cited.</p> <p>8 Q. Okay.</p> <p>9 A. The computer makes the paper easier, it just</p> <p>10 takes me a little longer to open the files. Sorry</p> <p>11 about that.</p> <p>12 So on Page 357 --</p> <p>13 Q. This is of the textbook?</p> <p>14 A. Yes, Woodson Textbook, he provided a</p> <p>15 description of lights to display information. And</p> <p>16 one of the examples he provides is an indicator</p> <p>17 light, either a -- it looks like a washer -- I would</p> <p>18 say it's a washer.</p> <p>19 And, then he says the use of lights to</p> <p>20 display information changes in display status to</p> <p>21 signify changes and functional status rather than</p> <p>22 results of continued activation alone. He just</p> <p>23 provides some -- he provides some descriptions of</p> <p>24 the different types of lights.</p>	<p style="text-align: right;">157</p> <p>1 use is ubiquitous amongst products, particularly</p> <p>2 appliances.</p> <p>3 Q. In the Vitale deposition, we talked about</p> <p>4 reading level assessments, and I believe it was in</p> <p>5 conjunction with your view of Dr. Purswell's</p> <p>6 opinion.</p> <p>7 Do you remember that testimony, even</p> <p>8 generally?</p> <p>9 A. Generally, I do.</p> <p>10 Q. Okay. So, Dr. Purswell evaluates the</p> <p>11 information in the manual using the Flesch-Kincaid</p> <p>12 Reading Assessment.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And, your response to his opinion</p> <p>15 concerning that was that the text should be between</p> <p>16 a fourth and sixth grade reading level. Do you</p> <p>17 remember that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. He has a grade level higher. I think</p> <p>20 eighth grade he says in his report.</p> <p>21 A. He just provides -- this is my memory</p> <p>22 because I don't have it.</p> <p>23 Q. I understand.</p> <p>24 A. He provides that the reading level was about</p>

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<p style="text-align: right;">158</p> <p>1 6.8, almost a seventh reading level. So, that's</p> <p>2 satisfactory.</p> <p>3 My point in the Vitale deposition is that</p> <p>4 typically, warnings instructions are written at no</p> <p>5 greater than a sixth-grade level. So, this is a</p> <p>6 little bit higher. But, the general recommendation</p> <p>7 for general consumer use is to write between a</p> <p>8 fourth and a sixth grade level.</p> <p>9 Q. Okay. So that general recommendation, as</p> <p>10 you put it, to write between a fourth and sixth</p> <p>11 grade level, where does that come from?</p> <p>12 A. It comes from Human Factors Literature, and</p> <p>13 I had brought two articles with me to the Vitale</p> <p>14 deposition that explicitly stated that. I brought</p> <p>15 them with me today, but Ken pulled them from the</p> <p>16 file.</p> <p>17 Q. He did?</p> <p>18 A. As far as the Purswell --</p> <p>19 MR. LEVINE: Oh, the things that</p> <p>20 were attached at the end?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. LEVINE: Do you want me to</p> <p>23 bring them in?</p> <p>24 THE WITNESS: It's up to you.</p>	<p style="text-align: right;">160</p> <p>1 record, identify Vigilante-12?</p> <p>2 A. Vigilante-12 is an excerpt from Chapter 36</p> <p>3 in the textbook Handbook of Human Factors and</p> <p>4 Ergonomics, Second Edition, published in 1997.</p> <p>5 Q. So before we took that short break, I</p> <p>6 believe you had testified that the general</p> <p>7 recommendation is that the reading level for a</p> <p>8 warning should be between the fourth and fifth</p> <p>9 grade. Is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And, you believe these articles would</p> <p>12 support that?</p> <p>13 A. Yes.</p> <p>14 Q. And, if you would draw my attention to where</p> <p>15 that is?</p> <p>16 A. On Exhibit 12, do you see where it's</p> <p>17 highlighted on Page 1187 of the text?</p> <p>18 Q. I see that, "As noted earlier, a grade 4-6</p> <p>19 range is usually recommended."</p> <p>20 A. Yes.</p> <p>21 Q. And, they're talking about with regard to</p> <p>22 on-product warnings, literature, or both?</p> <p>23 A. This is with regard to warnings. So, it's</p> <p>24 for both on-product, and other manifestations of</p>
<p style="text-align: right;">159</p> <p>1 MS. YEMMA: Yes, do you mind?</p> <p>2 MR. LEVINE: No, no.</p> <p>3 MS. YEMMA: It was my understanding</p> <p>4 only the report had been pulled, but...</p> <p>5 MR. LEVINE: Yes, I didn't even</p> <p>6 realize there was something attached to</p> <p>7 them.</p> <p>8 MS. YEMMA: Okay, no issue.</p> <p>9 (Brief recess.)</p> <p>10 (Documents marked Vigilante Exhibit</p> <p>11 Nos. 11 and 12 for identification.)</p> <p>12 BY MS. YEMMA:</p> <p>13 Q. Okay. We just took a short break to make</p> <p>14 some copies. So, I just marked as Vigilante 11 and</p> <p>15 12 two documents, and I'm going to hand them to you.</p> <p>16 Do you recognize those documents?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And if you would, for the record,</p> <p>19 what is Vigilante-11?</p> <p>20 A. It's a reference guide call Manufacturer's</p> <p>21 Guide Developing Consumer Product Instructions</p> <p>22 published in October, 2003, for the U.S. Consumer</p> <p>23 Product Safety Commission.</p> <p>24 Q. Okay. And how about, if you would for the</p>	<p style="text-align: right;">161</p> <p>1 warnings.</p> <p>2 Q. Okay. And, is there anything in</p> <p>3 Vigilante-11?</p> <p>4 A. Yes. Page 30, under the section "What Makes</p> <p>5 the Text Readable", it states, "A 6th to 8th reading</p> <p>6 level is often considered suitable for the general</p> <p>7 public, but an even lower level may be desirable for</p> <p>8 critical information. Higher reading levels might</p> <p>9 be acceptable for more literate and educated</p> <p>10 audiences. When in doubt, write to the 6th grade</p> <p>11 reading level."</p> <p>12 Q. Do you know the Clouds' educational</p> <p>13 backgrounds?</p> <p>14 A. I think Mr. Cloud was a -- I know he was --</p> <p>15 I believe he was either a college grad -- I don't</p> <p>16 know if he was an advanced degree grad, or not. I</p> <p>17 don't recall.</p> <p>18 Q. How about Mr. Cloud?</p> <p>19 A. I don't recall. I don't think they were</p> <p>20 high school dropouts.</p> <p>21 Q. Okay. Have any of the opinions in your</p> <p>22 report been peer-reviewed?</p> <p>23 A. In this particular report, I don't believe</p> <p>24 they have been peer-reviewed. And similar reports I</p>

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<p style="text-align: right;">162</p> <p>1 have done in the past, they have been.</p> <p>2 Q. And, would those have been reports you did</p> <p>3 at Robson?</p> <p>4 A. Yes.</p> <p>5 Q. And are the opinions you've offered in the</p> <p>6 Cloud case, are they substantially similar to the</p> <p>7 reports that you issued, while you were at Robson,</p> <p>8 that had been peer-reviewed?</p> <p>9 A. Similar, yes.</p> <p>10 Q. In those earlier reports, had you -- and I'm</p> <p>11 just going from my own memory -- were you proposing</p> <p>12 the alternative warnings like you are in this case?</p> <p>13 A. How do you mean?</p> <p>14 Q. Like, the Illustrations 1, 2, 3 and 4, were</p> <p>15 those included in the early reports like in the</p> <p>16 Powers and Marquette matters?</p> <p>17 A. Something similar to 1 and 2 were.</p> <p>18 Sometimes, if the installation instruction issue is</p> <p>19 not relevant to the case, I don't provide it in the</p> <p>20 report. And, I think I started adding Illustration</p> <p>21 No. 2 in more recent reports because it was</p> <p>22 identified more recently in Electrolux's discovery</p> <p>23 material.</p> <p>24 Q. I'm sorry, could you say that again with</p>	<p style="text-align: right;">164</p> <p>1 main things.</p> <p>2 Of course, the warnings should be at the</p> <p>3 front of the manual, or at the beginning of the</p> <p>4 manual.</p> <p>5 Q. So if you were using Illustration 1 -- so</p> <p>6 let's say it's a dryer that had an indicator light.</p> <p>7 Where would Illustration 1 go in the manual?</p> <p>8 A. Well, I think it would go up front, and then</p> <p>9 it would be repeated within the operations manual in</p> <p>10 the section that describes, and talks about, the</p> <p>11 service indicator lights.</p> <p>12 MS. YEMMA: So I am marking, as</p> <p>13 Vigilante-13, the Owner's Guide.</p> <p>14 (Owner's Guide marked Vigilante</p> <p>15 Exhibit No. 13 for identification.)</p> <p>16 BY MS. YEMMA:</p> <p>17 Q. So if you could just explain in context, now</p> <p>18 that I have handed you the document, where would you</p> <p>19 put Illustration 1?</p> <p>20 A. Certainly on the page that's marked Page No.</p> <p>21 2.</p> <p>22 Q. Okay.</p> <p>23 A. And, then there would be a section related</p> <p>24 to the service indicator lights. So it's not</p>
<p style="text-align: right;">163</p> <p>1 regard to the last part?</p> <p>2 A. Illustration 2 --</p> <p>3 Q. Okay.</p> <p>4 A. -- I don't believe I had identified that in</p> <p>5 the Electrolux discovery material in the years past.</p> <p>6 It's only been within, like, the last year, or so,</p> <p>7 that I identified that in Electrolux's literature.</p> <p>8 Q. Other than the articles, that are referenced</p> <p>9 in your report, are there any other articles you are</p> <p>10 relying on to form your opinions in this case?</p> <p>11 A. Specifically?</p> <p>12 Q. Specifically.</p> <p>13 A. No.</p> <p>14 Q. So with regard to the Owner's Manual, I know</p> <p>15 you are proposing the inclusion of what's in the</p> <p>16 illustration, that they be added to the manuals,</p> <p>17 right, like, Illustration 1, 2?</p> <p>18 A. Yes.</p> <p>19 Q. Is there anything else about the Owner's</p> <p>20 Manual that you would change?</p> <p>21 A. Yes. Using the warnings would certainly</p> <p>22 make the information more conspicuous, and more</p> <p>23 prominent on the pages. The illustration would make</p> <p>24 it more comprehensive because I think that's the</p>	<p style="text-align: right;">165</p> <p>1 currently a section in the manual because there is</p> <p>2 no service indicator light in the manual.</p> <p>3 Q. So you would like to see a section about the</p> <p>4 indicator lights, in addition to what we see in</p> <p>5 Illustration 1, in the Owner's Guide?</p> <p>6 A. Well, there had to be because you have to</p> <p>7 describe the use. So, for example, on Page 5,</p> <p>8 there's a features list. For example, the cycle</p> <p>9 signal control, the drum light, reversible door,</p> <p>10 drying rack, you would imagine a section dealing</p> <p>11 with the indicator lights, too, whether you put it</p> <p>12 under features, you make it its own section, you</p> <p>13 know, whatever you want to do.</p> <p>14 Q. And with regard to Illustration 2, would you</p> <p>15 include that in the Owner's Guide, and the</p> <p>16 Installation Instructions, or just one of them?</p> <p>17 A. I think it needs to be in the Owner's Guide.</p> <p>18 Installation Instructions, it may be redundant to</p> <p>19 put it in there. I don't think it can hurt, but it</p> <p>20 needs to be in the Owner's Guide.</p> <p>21 Q. And then with regard to Illustration 3, you</p> <p>22 propose that it be included in the Owner's Guide.</p> <p>23 Right?</p> <p>24 A. Well, yes, it would be in the Owner's Guide.</p>

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<p style="text-align: right;">166</p> <p>1 It would either be Illustration 1 and 2, or</p> <p>2 Illustration 2 and 3.</p> <p>3 Q. And with regard to the proposed placement of</p> <p>4 Illustration 3, would it be at the front just like</p> <p>5 for Illustration 1?</p> <p>6 A. Yes, you definitely have Illustration 1 or 2</p> <p>7 on the front prominently placed on the Page 2. And,</p> <p>8 then, like I said, you either create a new section,</p> <p>9 or maybe you put it under Features, or you put it</p> <p>10 under the Care and Cleaning on Page 6. But, you've</p> <p>11 got to include that information somewhere in the</p> <p>12 body of the manual explaining what the process is,</p> <p>13 and then that's the appropriate place for</p> <p>14 Illustration No. 2.</p> <p>15 Q. On Illustration 1, you don't make any</p> <p>16 reference to the 18-month cleaning.</p> <p>17 A. Right.</p> <p>18 Q. Is there any reason for that? Or, why</p> <p>19 didn't you reference it?</p> <p>20 A. The 18-month cleaning is accounted for in</p> <p>21 the cycle counter. So, we know, and by "we" I mean</p> <p>22 myself, Mr. Stoddard, and Electrolux, know that 625</p> <p>23 cycles is an average for 18 months. And that an</p> <p>24 individual user may encounter 625 cycles in a few</p>	<p style="text-align: right;">168</p> <p>1 MS. YEMMA: Okay. We'll organize</p> <p>2 the exhibits while you're gone.</p> <p>3 (Mr. Levine and Dr. Vigilante exit</p> <p>4 the conference room.)</p> <p>5 MR. LEVINE: I wanted to make a</p> <p>6 statement -- and it's really just so that</p> <p>7 the record will reflect that I actually sat</p> <p>8 here for the entire deposition -- and it's</p> <p>9 that the expert report was issued in</p> <p>10 January, and then the other case came along.</p> <p>11 And through the additional consideration, or</p> <p>12 study, the other warnings were issued. They</p> <p>13 are not the warnings that were in the</p> <p>14 January report. It would be our</p> <p>15 intention -- when I say "our intention",</p> <p>16 from a litigation standpoint, that we use</p> <p>17 the more current warnings in this trial, or</p> <p>18 litigation, as well.</p> <p>19 And, I don't know if that was clear</p> <p>20 from what communications that Patrick has</p> <p>21 had with you, or the progress of this, and</p> <p>22 wanted to make sure that you had had enough</p> <p>23 time to ask Dr. Vigilante questions about</p> <p>24 the more current ones so that at the time of</p>
<p style="text-align: right;">167</p> <p>1 months, or maybe three years.</p> <p>2 So, Electrolux has pinned their cleaning</p> <p>3 requirement based upon an approximate number of</p> <p>4 cycles. So, we don't want the user cleaning the</p> <p>5 dryer before they have to, and we don't want them to</p> <p>6 clean the dryer after it needs to be done.</p> <p>7 So if they're a heavy user, and they reach</p> <p>8 18 months of average use within 12 months, you want</p> <p>9 the cleaning at 12 months, not going another six</p> <p>10 months, and another six months of lint buildup.</p> <p>11 Q. Okay. I believe we have thoroughly covered</p> <p>12 your opinions in this matter, and your bases for</p> <p>13 them.</p> <p>14 Is there anything that you would like to</p> <p>15 add?</p> <p>16 A. I can't think of anything at this time.</p> <p>17 MS. YEMMA: Okay. Ken, unless you</p> <p>18 have anything, I'm done.</p> <p>19 MR. LEVINE: I have no questions of</p> <p>20 this witness.</p> <p>21 But just bear with me for one</p> <p>22 second. I do want to consult with him for</p> <p>23 just a minute on one issue, and then I'll be</p> <p>24 right back in.</p>	<p style="text-align: right;">169</p> <p>1 trial, no one will sit back, and say, well,</p> <p>2 it wasn't in your original report, and so</p> <p>3 you can't talk about it.</p> <p>4 Are there any more questions that</p> <p>5 you would like to ask in that regard?</p> <p>6 MS. YEMMA: And I didn't know until</p> <p>7 today, that you were using the more updated</p> <p>8 warnings. But, I understand that, and I</p> <p>9 feel like I've asked enough questions.</p> <p>10 And, in addition, in Vitale -- and</p> <p>11 you'll correct me if I'm wrong -- that</p> <p>12 report did contain updated warnings. Right?</p> <p>13 THE WITNESS: Yes. That's why</p> <p>14 things got a little bit confused because of</p> <p>15 the timing between everything.</p> <p>16 MS. YEMMA: I understand. Sure.</p> <p>17 MR. LEVINE: All right. And, I</p> <p>18 have nothing else to add --</p> <p>19 MS. YEMMA: I appreciate you</p> <p>20 mentioning that.</p> <p>21 MR. LEVINE: -- other than some</p> <p>22 faxing breaks, and to get some candy from</p> <p>23 the outside, and occasionally I made bad</p> <p>24 jokes, that were edited out of the</p>

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<p style="text-align: right;">170</p> <p>1 transcript, and that's perfectly acceptable. 2 Thanks. I have nothing else to 3 add. 4 Do you have anything further? 5 MS. YEMMA: No, I have nothing 6 further. I think we're all set. 7 MR. LEVINE: All right. 8 Well, thank you very much. 9 THE WITNESS: Thank you. 10 MS. YEMMA: Thank you, Dr. 11 Vigilante. 12 13 14 (Witness excused.) 15 (Deposition concluded at 3:20 16 p.m.) 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">172</p> <p>1 INSTRUCTIONS TO WITNESS 2 3 Please read your deposition over carefully 4 and make any necessary corrections. You should 5 state the reason in the appropriate space on the 6 errata sheet for any corrections that are made. 7 After do so, please sign the errata sheet 8 and date it. 9 You are signing same subject to the changes 10 you have noted on the errata sheet, which will be 11 attached to your deposition. 12 It is imperative that you return the 13 original errata sheet to deposing attorney within 14 thirty (30) days of receipt of the deposition 15 transcript by you. If you fail to do so, the 16 deposition transcript may be deemed to be accurate 17 and may be used in court. 18 19 20 21 22 23 24</p>
<p style="text-align: right;">171</p> <p>1 CERTIFICATE 2 3 I HEREBY CERTIFY that the proceedings, 4 evidence and objections are contained fully and 5 accurately in the stenographic notes taken by me 6 upon the Deposition of WILLIAM J. VIGILANTE, JR. 7 Ph.D., CPE, August 31, 2016, and that this is a true 8 and correct transcript of same. 9 10 11 12 13 14 _____ 15 DONNA HUNTER 16 Registered Professional Reporter 17 and Notary Public 18 19 (The foregoing certification of 20 this transcript does not apply to any 21 reproduction of the same by any means, 22 unless under the direct control and/or 23 supervision of the certifying reporter.) 24</p>	<p style="text-align: right;">173</p> <p>1 E R R A T A 2 3 PAGE LINE CORRECTION 4 5 ---- ---- ----- 6 ---- ---- ----- 7 ---- ---- ----- 8 ---- ---- ----- 9 ---- ---- ----- 10 ---- ---- ----- 11 ---- ---- ----- 12 ---- ---- ----- 13 ---- ---- ----- 14 ---- ---- ----- 15 ---- ---- ----- 16 ---- ---- ----- 17 ---- ---- ----- 18 ---- ---- ----- 19 ---- ---- ----- 20 ---- ---- ----- 21 ---- ---- ----- 22 ---- ---- ----- 23 ---- ---- ----- 24 ---- ---- -----</p>

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<p style="text-align: right;">174</p> <p>1 ACKNOWLEDGEMENT OF DEPONENT</p> <p>2</p> <p>3 I _____, do hereby</p> <p>4 certify that I have read the foregoing pages</p> <p>5 ____ to ____ and that the same is a correct</p> <p>6 transcription of the answers given by me to the</p> <p>7 questions therein set forth, except for the</p> <p>8 corrections or changes in form or substance, if any,</p> <p>9 noted in the attached Errata sheet.</p> <p>10</p> <p>11 -----</p> <p>12</p> <p>13 Subscribed and sworn to before me this</p> <p>14 ____ day of _____, ____.</p> <p>15</p> <p>16 My commission expires:</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 Notary Public</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">176</p> <p>1 Vigilante-2</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Vigilante-2 is a CD retained by Ms.</p> <p>6 Yemma, and not attached to the transcript.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">175</p> <p>1 Vigilante-1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">177</p> <p>1 Vigilante-3</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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<div data-bbox="790 1037 852 1066" data-label="Text">187</div> <div data-bbox="477 1085 639 1123" data-label="Text">Vigilante-13</div> <div data-bbox="233 1085 282 1883" data-label="Text"> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 </div>	

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